

REDACTED BY ORDER OF THE COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

WEATHERFORD TECHNOLOGY) (
HOLDINGS, LLC, AND) (CIVIL ACTION NO.
WEATHERFORD U.S., L.P.,) (2:17-CV-456-JRG
PLAINTIFFS) (MARSHALL, TEXAS
VS.) (
TESCO OFFSHORE SERVICES, INC.,) (DECEMBER 5, 2018
TESCO OFFSHORE SERVICES LLC,) (8:27 A.M.
DEFENDANTS) (

TRIAL TRANSCRIPT

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: Mr. Leslie V. Payne
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(Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

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8
9 P R O C E E D I N G S

10 (Jury out.)

11 COURT SECURITY OFFICER: All rise.

12 THE COURT: Be seated, please.

13 Counsel, before I bring the jury in, yesterday, I
14 ordered from the bench that the parties submit revised final
15 jury instructions and verdict forms or proposed final jury
16 instructions and verdict forms. I may not have been as
17 clear as I should have been. My intention was that that be
18 a joint submission.

19 Overnight, Defendants filed their separate
20 submission. Plaintiffs have not yet filed theirs. I'm
21 going to direct that Plaintiffs take the Defendants' version
22 as submitted separately and build it into their submission
23 so that any conflicting proposals are side-by-side in a
24 single document. And I'm going to extend the Defendants'
25 time to file that from noon until 3:00 o'clock.

1 MR. FIRST: Thank you, Your Honor.

2 THE COURT: And that's probably a result of my not
3 being as precise as I intended to, but it's much easier for
4 the Court to deal with competing proposals when Plaintiffs
5 are in italicized and Defendants are bolded, and they follow
6 one right after the other, and then where there are sections
7 where there's no disagreement, that we have ordinary type,
8 and then I can go easily from area to area where there's a
9 lack of agreement and look at the competing proposals in one
10 document.

11 So that's what I was looking for. I may not have
12 been as precise in my instruction as I intended, but I think
13 we can cure it by you simply -- Plaintiffs simply taking
14 what Defendants have submitted and folding it into your
15 submission on that kind of a basis, and I'll extend your
16 time so that you can do that.

17 MR. PAYNE: Mr. Baxter is working on it right now,
18 so we'll get that message to him. 3:00 o'clock, you said,
19 right?

20 THE COURT: 3:00 o'clock, yes.

21 MR. BOWICK: And, Your Honor, I'll have a Word
22 version submitted to them so they can manipulate --

23 THE COURT: Yes, that will be helpful. Thank you,
24 Mr. Bowick.

25 All right. Plaintiffs, it's my understanding you

1 have one more witness to call in your case-in-chief?

2 MR. PAYNE: Yes, sir.

3 THE COURT: All right. Defendants indicated
4 yesterday they had two expert witnesses to call, and they
5 were considering whether their corporate representative
6 would testify. Have you reached a decision in that regard,
7 Mr. Raley?

8 MR. RALEY: Yes. And we informed counsel shortly
9 after yesterday's trial, we will not call Mr. Subodh to the
10 stand. So we have our two experts, Your Honor. First,
11 Dr. Rodgers and then Ms. Webster. We will have a very brief
12 reading from a deposition that was not opposed, and we
13 shared the clips with them.

14 THE COURT: Yes. The discussion is about live
15 witnesses only.

16 MR. RALEY: Yes, Your Honor.

17 THE COURT: I assume there may be a short depo clip
18 from one or the other sides in and amongst these. I was
19 just mainly asking about live witnesses.

20 MR. RALEY: Yes, Your Honor.

21 THE COURT: Okay. Anything else, counsel, before
22 we bring in the jury?

23 We do need to read into the record the exhibits
24 from yesterday's portion of the trial. Let's do that.

25 MR. PAYNE: Your Honor, there's one other thing,

1 please --

2 THE COURT: Yes.

3 MR. PAYNE: -- which I raised with your clerks.

4 That is, we're going over financial information this morning
5 with damages experts -- sorry -- our damages expert this
6 morning, I assume their damages expert this afternoon.

7 We don't want to seal the courtroom, but there is
8 going to be some sensitive, you know, revenue numbers,
9 profit and loss numbers, things like that. We would like --
10 both parties would like to not seal the courtroom and
11 simply, within a matter of a couple of days, inform the
12 Court of what portions of the transcript we would like to
13 seal. I know that's not consistent with your general
14 policy.

15 THE COURT: I have a standing order on this matter.

16 MR. PAYNE: Yes. Yes, sir. We're asking for an
17 exception, both parties are, Your Honor, to do away with the
18 rigmarole of sealing the courtroom.

19 And we can get that in, for that sealing,
20 identification of a couple of pages to you very -- very
21 quickly, if you would grant leave --

22 THE COURT: What's the rationale, Mr. Payne?
23 What's the justification?

24 MR. PAYNE: That we don't want transcripts to be
25 publicly available to competitors that have profit and loss

1 information in there, revenue information in there.

2 THE COURT: I understand why you don't want the
3 information to be public. My question is, why do you want
4 to do it without sealing the courtroom and then submitting
5 redactions as opposed to sealing the courtroom when the
6 testimony is offered originally?

7 MR. PAYNE: Because it's okay for the people in
8 this courtroom that we've seen to hear this information, and
9 we don't want to go through the disruption of sealing the
10 courtroom, but we don't want the general public to have that
11 information.

12 THE COURT: Of course, you understand, under my
13 standing order, those persons subject to the protective
14 order are not required to exit the courtroom when it's
15 sealed. I don't see many people in the courtroom that may
16 not be under the protective order in this case.

17 MR. PAYNE: I -- I --

18 THE COURT: Now, you know better than I do.

19 MR. PAYNE: Yeah. And I -- and it's in-house
20 counsel, I think, really.

21 THE COURT: Okay. What's Defendants' posture on
22 this issue?

23 MR. BOWICK: Your Honor, we have no objection. We
24 concur with that.

25 THE COURT: Well, I will say this: If I'm -- if

1 I'm considering granting your request, I want to limit it to
2 only the expert witnesses who testify the remaining portion
3 of the trial. I don't want to open this up to possible
4 redactions for everybody else that's already testified in
5 the case.

6 MR. PAYNE: That's right. Just the two --

7 THE COURT: You're only talking about which
8 witnesses, Mr. Payne?

9 MR. PAYNE: Mr. Bratic and Ms. Webster.

10 THE COURT: Okay. Well, then I'll -- based on the
11 joint request of the parties and holding you to your
12 commitment that your suggested redactions will be targeted,
13 limited, and almost immediately submitted, then I'll waive
14 the application of the Court's standing order for those two
15 expert witnesses only. Outside of that, the standing order
16 of the Court remains in force.

17 MR. PAYNE: Thank you, Your Honor. We appreciate
18 the indulgence.

19 THE COURT: All right. Anything else before we
20 bring in the jury?

21 MR. BOWICK: Your Honor, reading the exhibits.

22 MR. PAYNE: Sorry.

23 THE COURT: Let's do that.

24 Let's proceed to read the exhibits from the list of
25 pre-admitted exhibits used in yesterday's portion of the

1 trial.

2 Go ahead, Mr. Payne, for Plaintiffs.

3 MR. PAYNE: Yes, sir. Thank you.

4 Yesterday at trial, Plaintiffs offered the
5 following exhibits, all PX numbers: 3, 4, 13, 14, 19, 20,
6 21, 28, 29, 31, 35, 39, 56 -- which I'll come back to, Your
7 Honor -- 60, 62, 63, 64, 65, 66, 67, 78, 79, 126, 148, 149,
8 181.01 through .148, and 217, which I'd also like to
9 address.

10 217 and 56 are the declarations of Mr. Meeks, which
11 were pre-admitted and which various portions of were shown
12 to the jury. And so we would offer those into the record,
13 as well. That's it.

14 MR. RALEY: I believe --

15 THE COURT: And when you say you would offer those,
16 you're talking about only the portions of those declarations
17 that were shown to the jury, not the entire declaration?

18 MR. PAYNE: I would prefer for the whole
19 declarations to -- to be into the record, absolutely. I
20 mean, it's not the policy to only put into the record, you
21 know, the segments that a witness testifies about.

22 THE COURT: Well, those declarations were
23 pre-admitted subject to the existing limine orders, which
24 permitted the Court in its gatekeeping function to determine
25 during the course of the trial which portions, if any, would

1 be shown to the jury. During the trial, the Court permitted
2 the jury to be shown two particular paragraphs, and those
3 were the only portions of those declarations that were shown
4 to the jury.

5 Consistent with my previous approach, I'm not going
6 to allow the entire declarations to be exhibits which the
7 jury could then ask for, and I would send them during their
8 declarations, them only having seen those two paragraphs
9 from those declarations.

10 So with regard to that particular exhibit, I'll
11 pre-admit as a part of the record the exhibit to be
12 redacted, except for the two paragraphs that were shown to
13 the jury. Otherwise, we will have defeated the entire
14 purpose of letting the Court be a gatekeeper and determine
15 in its discretion what was appropriate under a 403 balancing
16 test for the jury to see and what was inappropriate for the
17 jury to see. So I'm only going to permit the redacted --
18 the redacted documents reflecting and having unredacted
19 within them those two particular paragraphs to be a part of
20 the record.

21 MR. PAYNE: One clarification -- I'm sorry.

22 MR. RALEY: May the record note my exception and
23 objection and reincorporation of arguments during pre-trial
24 on this point?

25 THE COURT: I gather, Mr. Raley, you don't want the

1 entire declarations put into the record?

2 MR. RALEY: I don't --

3 THE COURT: You don't want anything in the record?

4 MR. RALEY: Any of it put in.

5 THE COURT: I understand.

6 MR. RALEY: For the reasons previous expressed.

7 THE COURT: I think the record is replete with your
8 position.

9 MR. RALEY: Thank you, Your Honor.

10 MR. PAYNE: Can we -- with respect to redactions, I
11 assume it's okay to include the style and the first
12 paragraph that introduces --

13 THE COURT: The style -- they style and the -- the
14 style and the title of the document, and then as far as
15 where the text begins, only those two paragraphs, including
16 the signature. Whatever was shown to the jury should
17 only -- be the only thing shown below the style and heading.

18 MR. PAYNE: Okay.

19 MR. RALEY: The style is the wrong parties, though.

20 THE COURT: The style has the other Defendants on
21 it?

22 MR. RALEY: Yes. So I would object to that for
23 additional reasons.

24 THE COURT: All right. Then redact -- put the --
25 put the existing style on there. Redact the Defendants that

1 have been subsequently dismissed. Have the title and then
2 have the portions of the text, including the signature, be
3 the only thing else shown. That will be what's
4 pre-admitted. I mean, that's what will be admitted and a
5 part of the record.

6 MR. PAYNE: Thank you.

7 THE COURT: All right. Are there items from the
8 list of pre-admitted exhibits used by Defendants to read
9 into the record --

10 MR. BOWICK: Yes, Your Honor.

11 THE COURT: -- relating to yesterday's portion of
12 the trial? Go ahead, Mr. Bowick.

13 MR. BOWICK: Thank you, Your Honor.

14 On December 4th, 2018, the Defendants used
15 Plaintiff Exhibits 1, 12, 31, 56, 75, and 217. And I'll
16 note that consistent with the Court's ruling, 56 and 217 are
17 the redacted forms.

18 And Defendants' Exhibits 1, 7, and 11.

19 THE COURT: All right. Except for the declarations
20 by Mr. Meeks, which we've addressed, does either side have
21 objections to the respective offerings from the other side
22 related to what was used before the jury yesterday from the
23 list of pre-admitted exhibits?

24 MR. PAYNE: I don't know because I didn't get a
25 list before this conference. No objection to 1 --

1 THE COURT: Well, this is information that should
2 have been exchanged before we got here this morning.

3 What happened, Mr. Bowick?

4 MR. BOWICK: Your Honor, my legal assistant had a
5 problem this morning. She was taking care of this. She's
6 not here yet, but that's the problem. I didn't realize it
7 until I got here, and she was not.

8 THE COURT: Well, let's make sure it doesn't
9 reoccur.

10 MR. BOWICK: Thank you, Your Honor. It will not.

11 MR. PAYNE: Did he say DX-1, 7, and 11?

12 THE COURT: Let's do this. You and Mr. Bowick meet
13 and confer quietly together. Tell me when you've satisfied
14 yourselves or if you have an objection lodged. The time
15 this takes, I'll charge against the Defendants' part of the
16 case.

17 (Pause.)

18 MR. PAYNE: No objection, Your Honor.

19 THE COURT: All right. Is there anything else
20 before I bring in the jury?

21 Anything from Plaintiffs?

22 MR. PAYNE: Can I hand up the binders?

23 THE COURT: You can hand out the binders as I bring
24 the jury in.

25 Anything from Defendants?

1 MR. RALEY: No, Your Honor.

2 THE COURT: Let's bring in the jury, please,
3 Mr. Johnston.

4 COURT SECURITY OFFICER: All rise for the jury.
5 (Jury in.)

6 THE COURT: Welcome back, ladies and gentlemen.
7 Please be seated.

8 All right. Plaintiffs, call your next witness.

9 MR. PAYNE: Mr. Walt Bratic.

10 THE COURT: All right. Mr. Bratic, if you'll come
11 forward and be sworn by our courtroom deputy.

12 THE WITNESS: Yes, Your Honor.

13 (Witness sworn.)

14 THE COURT: Please come around, have a seat on the
15 witness stand.

16 MR. PAYNE: Your Honor, may I approach with the
17 binders?

18 THE COURT: You may.

19 All right. Mr. Payne, you may proceed with your
20 direct examination when you're ready.

21 WALT BRATIC, PLAINTIFFS' WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. PAYNE:

24 Q. Mr. Bratic, good morning.

25 A. Good morning.

1 Q. Could you please introduce yourself to the jury?

2 A. Sure. My name is Walt Bratic. My last name is spelled
3 B-r-a-t-i-c.

4 Q. And where do you reside, sir?

5 A. I live in Houston, Texas.

6 Q. Where do you work?

7 A. I work for a Texas-based accounting and consulting firm
8 called Whitley Penn.

9 Q. What kind of work do you do at Whitley Penn?

10 A. I provide economic, financial, accounting, and
11 statistical consulting services for a variety of clients.

12 Q. What is your position there?

13 A. I'm the managing director.

14 Q. And why are you here today?

15 A. I was retained on behalf of Weatherford to determine the
16 amount of damages Weatherford has suffered, assuming that
17 Tesco has infringed the '637 patent.

18 Q. Did you prepare some slides today for purposes of your
19 testimony?

20 A. I did.

21 Q. And does Slide 2 reflect an accurate rendition of your
22 qualifications and education?

23 A. Yes.

24 Q. Can you briefly summarize your education for the jury?

25 A. Yes. I have two formal college degrees. I have a

1 Bachelor's degree from the University of Pennsylvania, which
2 is in Philadelphia, Pennsylvania. I also have an MBA, a
3 Master of Business Administration degree from The Wharton
4 School of Business which is also at the University of
5 Pennsylvania.

6 Q. And is The Wharton School of Business nationally
7 recognized?

8 A. It is. It's also the oldest business school in the
9 United States.

10 Q. Can you explain to the jury whether you're a Certified
11 Public Accountant?

12 A. Yes, I am a Certified Public Accountant. I've been
13 licensed by the state of Texas since 1981.

14 Q. What specifically does it take to become a CPA?

15 A. Well, you have to have a -- have taken a number of
16 accounting hours. So you have to submit a list of your
17 accounting courses to qualify to sit for the exam.
18 Currently, I believe there are four sections of the exam.
19 When I took it, there were five.

20 You have to pass all parts of the exam. Then once
21 you've passed the exam, you have to sit -- excuse me, not
22 sit -- you have to work under the supervision of a licensed
23 CPA for two years. Then you get your license certification.

24 But then every year, I have to go to class and
25 submit 40 hours of training, accounting training, in order

1 to maintain my license.

2 Q. Are you a Certified Licensing Professional?

3 A. I am.

4 Q. What does that mean?

5 A. Well, a Certified Licensing Professional is a
6 designation given -- a certification given by the Licensing
7 Executive Society of the United States and Canada. And
8 that's an organization of people in -- who deal in licensing
9 of intellectual property rights.

10 And I qualified for it by giving them a lengthy
11 list of projects I've worked on involving licensing of
12 intellectual property rights, and then every three years, I
13 have to submit training that I've taken to maintain that
14 license.

15 Q. What are intellectual property rights?

16 A. Well, intellectual property rights would be, for
17 example, patents, trade secrets, copyrights, trademarks,
18 trade dress. Those are all what are commonly called
19 intellectual property rights.

20 Q. As a Certified Licensing Professional, have you actually
21 negotiated real-world patent licenses?

22 A. I have, going all the way back to 1980.

23 Q. How many?

24 A. I'd say somewhere around 250 and 300 to date.

25 Q. And how long have you worked in the field of patent

1 licensing and patent damages matters?

2 A. Well, I began my work in patent licensing back in 1980
3 when I was chief financial officer of a company that
4 designed oilfield equipment.

5 Q. Have you taught courses in intellectual property and
6 patent licensing?

7 A. Yes, I have, routinely.

8 Q. And can you describe some of those courses for the jury,
9 please.

10 A. Yes. For example, I've been teaching two classes at the
11 University of Houston Law School every year going back to
12 now 14 years. I'll be teaching my next class in April of
13 2019.

14 And in that course, I teach students -- talk to law
15 students about intellectual property damages and how they
16 compare and contrast, depending on the type of intellectual
17 property we're dealing with.

18 I've also been on the steering committee for the
19 intellectual property -- Advanced Intellectual Property
20 Conference at University of Texas in Austin for a number of
21 years.

22 And I've spoken on intellectual property licensing
23 and damages at intellectual property conferences all over
24 the world, North America, South America, Africa, Asia as
25 examples.

1 Q. How much speeches have you given over the course of your
2 career?

3 A. Oh, 150, 200.

4 Q. And are you on and have you been on any boards
5 concerning publications on intellectual property matters?

6 A. Yes. Over the last 15 years, I've served on the
7 editorial board of three intellectual property publications.
8 And my role in the editorial board is to take turns -- we
9 have to take turns screening articles that are being
10 submitted for the publication and review them and comment on
11 them and make suggestions to tweak them for the readership.

12 Q. Have you been appointed by any judges as an expert or an
13 examiner?

14 A. Yes. I've been appointed by state court judges in Texas
15 as a court-appointed examiner and expert in various
16 lawsuits.

17 Q. And what is an examiner?

18 A. Well, an examiner would be where a court has specific
19 questions. For example, there's been evidence in a case,
20 but there are holes in the evidence. And so I basically go
21 out and fill out the -- the gaps of information for the
22 benefit of the Court.

23 Q. About how many times have you been retained to work on
24 matters like this to give opinions on patent damages?

25 A. Over the course of my career, several hundred times.

1 Q. And has that been mostly for the plaintiff or the
2 defendant or a mixture?

3 A. It's been a mixture over -- over my career.

4 Q. How would you break it down?

5 A. Well, on balance, over -- if you spread it out over
6 30 years, it's been pretty even balanced. But over the last
7 three, four years, it's been more than 50 percent in favor
8 of representing patent owners.

9 Q. Thank you.

10 MR. PAYNE: Your Honor, we tender Mr. Bratic as an
11 expert in the field of patent damages.

12 THE COURT: Is there objection?

13 MR. RALEY: No objection, Your Honor.

14 THE COURT: Without objection, the Court will
15 recognize the witness as an expert in the designated field.

16 Continue, Counsel.

17 MR. PAYNE: Thank you.

18 Q. (By Mr. Payne) Mr. Bratic, can you explain some of the
19 work you've done in this case?

20 A. Yes. Well, there are various documents that were
21 produced in this case that I've reviewed over time, for
22 example, various legal pleadings that I reviewed. I've
23 reviewed the patent. I'm not a technical expert, but I
24 reviewed the patent and the asserted claims.

25 I interviewed Ted Zaleski, the technical expert for

1 Weatherford, who testified yesterday. I also interviewed
2 Mr. Porter. And I might point out I've interviewed them,
3 Mr. Zaleski and Mr. Porter, several times in conjunction
4 with my work in this case.

5 Q. Why did you interview them?

6 A. Well, Mr. Zaleski is a technical expert. I'm not. And
7 various opinions I have are -- I relied on his expertise and
8 his input in forming my opinions, as I'll explain later.

9 As far as Mr. Porter, he's worked in the offshore
10 oil and gas industry service sector for 30-some years. And
11 I -- one, I needed to ask him about Weatherford's business
12 operations, the industry, who the competitors are in
13 Deepwater Gulf of Mexico, and I also had to interview him
14 about various Tesco business records.

15 Q. What other type of information did you consider?

16 A. Well, there were a number of business records that have
17 been produced both by Weatherford and Tesco, such as tenders
18 that the jury has heard about, various invoices that both
19 Weatherford and Tesco have produced in this case regarding
20 TRS completion services, and I did some independent industry
21 research. And then I filed three expert reports in this
22 case. I was -- and I was deposed in this case.

23 Q. And did you prepare a slide summarizing your opinions?

24 A. I did.

25 Q. Can you explain to the jury the concept of a patent from

1 a financial or economic perspective, please?

2 A. Yes. Well, a patent is a property right. It's no
3 different than land. For example, you have land, you have
4 the right to own it, so you have a right to use it, you have
5 a right to exploit it, you have a right to keep people from
6 coming on your land, but if you give them permission to come
7 on your land, you have a right to be compensated to allow
8 somebody to come on and use your land.

9 Q. What are the types of damages that are potentially in
10 play here?

11 A. Well, in the realm of patent damages, there are lost
12 profits, and then there are reasonable royalties. Those are
13 the types of remedies, as I understand it, in -- in patent
14 damages.

15 Q. What are lost profits?

16 A. So lost profits would be the profits in this case that
17 Weatherford would have generated had Tesco not sold the
18 infringing TRS completion services.

19 In other words, if you assume that Tesco is an
20 infringer, which is an assumption I've had to make for my
21 analysis, and then if you assume that Tesco is an infringer
22 and then if you assume, because they're an infringer, they
23 weren't allowed to sell the infringing TRS completion
24 services, the question is, who would have provided those
25 services in the absence of Tesco selling the infringing

1 services they did?

2 So in that situation, you look to lost profits and
3 would Weatherford have been in a position to have provided
4 Tesco's customers the services that are deemed infringing
5 services?

6 Q. And do you assume infringement and validity for those
7 purposes?

8 A. I have to assume that for the purposes of patent
9 damages. That's a requirement.

10 Q. What -- what do you mean a requirement?

11 A. Well, there's a well-known case that I'll explain
12 shortly called the Georgia-Pacific case. And in that
13 case -- it was a patent case, Georgia-Pacific versus U.S.
14 Plywood, 40-something years ago. And the Court set out
15 parameters and required that in considering the patent
16 damages, the damages experts are supposed to assume that the
17 subject patents are valid and have been infringed.

18 Q. What is the other type of potential damages?

19 A. Well, the other type of damages are reasonable
20 royalties, and that is, for example, the payment of rent for
21 the use of one's intellectual property.

22 So it'd be like if a farmer owns oil -- has oil and
23 gas on his -- his or her land and the oil company wants to
24 come and take that oil and gas off the -- remove it, well,
25 if the farmer gives permission, the oil company comes on the

1 property, they remove and extract the oil and gas, and they
2 have to pay rent in the form of what's called royalties.

3 The payment of rent for the use of intellectual
4 property rights in patent damages are also called royalties.

5 Q. Did you reach opinions about damages?

6 A. I did. I did reach an opinion about damages in this
7 case.

8 Q. And with respect to Scenario A that is shown on this
9 slide, can you please briefly explain your opinion to the
10 jury?

11 A. Yes. So I have three opinions here -- three scenarios
12 I've prepared regarding patent damages.

13 Scenario A is a scenario in which only lost profits
14 **REDACTED BY ORDER OF THE COURT** apply. And that's **REDACTED BY ORDER OF THE COURT** for lost profits. There are
15 no reasonable royalties. In this scenario, Scenario A, I
16 assume that there are no non-infringing substitutes -- in
17 other words, nobody else could have provided Tesco's
18 infringing services other than Weatherford because -- as
19 Dr. Zaleski explained to me and testified yesterday, nobody
20 else could either had products that provided similar
21 benefits to the patented technology or they actually
22 infringe the patent, like, for example, Frank's.

23 And, therefore, the only company that could have
24 provided these TRS completion services, in the absence of
25 **REDACTED BY ORDER OF THE COURT** Tesco doing so, would be Weatherford. Therefore, I have **REDACTED BY ORDER OF THE COURT**

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1 [REDACTED] in lost profits. No reasonable royalties under
REDACTED BY ORDER OF THE COURT
2 Scenario A. And total damages are [REDACTED].

3 Q. Is Scenario A, in your opinion, the most appropriate
4 form of damages?

5 A. It is.

6 Q. Why?

7 A. Well, Scenario A is the most appropriate form of damages
8 because, as Mr. Zaleski explained to me, that there are no
9 non-infringing alternatives available for the '637 patent.
10 So you either have -- you either own the '637 patent, get to
11 practice it, or you have to take a license. Otherwise, you
12 can't provide TRS completion services using a control line
13 device.

14 Q. Can you briefly explain Scenario B on this slide?

15 A. Yes. So Scenario B is what I would call a hybrid
16 scenario. And what I mean by a hybrid is you'll see I have
REDACTED BY ORDER OF THE COURT
17 [REDACTED] for lost profits, [REDACTED] for reasonable
18 royalties, and I have total damages in this scenario of [REDACTED]
REDACTED BY ORDER OF THE COURT
19 [REDACTED].

20 And the reason this is a hybrid is because in this
21 Scenario B, I assume that Frank's is a competitor that has a
22 non-infringing alternative. In other words, I've assumed a
23 way, Mr. Zaleski's conclusion, that Frank's infringes the
24 '637 patent. And I've assumed, therefore, that Frank's
25 would have been able to lawfully compete. And since Frank's

1 is one of the major competitors in the Deepwater Gulf of
2 Mexico, I concluded that in this scenario, Frank's and
3 Weatherford would have shared in Tesco's sales if sale -- if
4 Tesco were not allowed to sell the TRS completion services
5 it did during the damages period.

6 Q. Can you summarize, finally, Scenario C?

7 A. Yes. Scenario C is -- Scenario C is the opposite of
8 Scenario A. Scenario C assumes that there are no lost
9 profits -- in other words, that Weatherford hasn't satisfied
10 the requirement to show that it would have made the sales
11 that -- all or some of the sales that Tesco actually made
12 during the damages period. And, therefore, the only damages
13 available under Scenario C would be reasonable royalty
14 **REDACTED BY ORDER OF THE COURT** damages, and that's **[REDACTED]**. So the total damages here
15 are also **[REDACTED]**.

16 Q. Since you believe A is the most appropriate, why did you
17 prepare these alternative models on B and C?

18 A. Well, because I don't know what the jury will determine
19 are the facts in this case, and I wanted to give them a menu
20 of choices, depending on what facts they find are the
21 appropriate facts as they relate to damages.

22 Q. In your testimony today, which scenario are you going to
23 address first?

24 A. Scenario A.

25 THE COURT: Mr. Bratic, please try to speak up a

1 little bit.

2 THE WITNESS: Oh, I'm sorry.

3 THE COURT: Go ahead.

4 THE WITNESS: Allergies. Yes, thank you.

5 Q. (By Mr. Payne) And what factors did you use in
6 considering Scenario A?

7 A. Well, I considered factors that -- referred to as the
8 Panduit factors, and there are four of them.

9 Q. And what are the Panduit factors?

10 A. There are four Panduit factors, one called demand for
11 the patented product, one dealing with the issue of absence
12 of non-infringing alternatives, one dealing with
13 manufacturing and marketing capacity, and the last one deals
14 with the ability to calculate damages. And these all came
15 from a well-known patent lawsuit a number of years ago
16 called Panduit Brothers -- I'm sorry, Panduit Corporation v.
17 Stahlin Brothers, involving issues of lost profits. And the
18 Court set out four factors to determine lost profits.

19 Q. With respect to Panduit Factor No. 1, what type of
20 information and evidence did you consider?

21 A. Well, I looked at tenders that were submitted by Tesco
22 and Weatherford. I looked at invoices in this case.

23 Q. Why did you look at tenders and invoices?

24 A. Well, tenders would indicate what kind of equipment that
25 customers -- offshore operators in the Deepwater Gulf of

1 Mexico are requiring in terms of equipment configuration
2 that they want their vendor or suppliers to make sure they
3 have.

4 Q. Did you look at Tesco's sales and Weatherford's sales?

5 A. I did.

6 Q. Can I ask you to look at your exhibit binder there,
7 please, and I'll direct your attention to PX-181.

8 A. Yes.

9 Q. And 182?

10 A. 181, okay.

11 Q. And did you consider both of those exhibits in
12 connection with your opinions?

13 A. I did.

14 Q. And is 181 the Tesco invoices?

15 A. It is.

16 Q. And does that go through 181.1 to 181.148?

17 A. It does.

18 Q. And is 182 the Weatherford invoices?

19 A. Yes.

20 Q. And does that go through .1 to .130?

21 A. Did you say .1?

22 Q. .1 to .130?

23 A. I have 182.01.

24 Q. Yes, sir. .01 through .130?

25 A. That's correct.

1 Q. So you considered about 148 Tesco invoices?

2 A. I'm sorry?

3 Q. You considered about 148 Tesco invoices?

4 A. Yes.

5 Q. And about 130, roughly, Weatherford invoices?

6 A. Yes.

7 Q. And does Tesco dispute your analysis on Prong 1, the
8 demand prong of the Panduit factors?

9 A. No.

10 Q. Did you rely on Mr. Zaleski with respect to Panduit
11 Factor No. 1?

12 A. In part, yes.

13 Q. Why did you rely on Mr. Zaleski?

14 A. Well, because he explained to me the nature of how these
15 various components work together in providing TRS completion
16 services. For example, he explained that although there are
17 separate components that are used, they all work together as
18 an integral functional unit to provide those TRS completion
19 services. And he also explained you can't mix and match
20 them. In other words, Weatherford's equipment is designed
21 to work Weatherford's equipment. It's not designed to work
22 with Frank's or Tesco's equipment, and the same for the
23 other competitors, as well.

24 So when you provide these services, it's as a
25 package.

1 Q. Why did you underline the phrase "functional unit" on
2 this slide?

3 A. Well, because it was my understanding from my interviews
4 with Mr. Zaleski that TRS completion services, in -- which
5 include the control line devices, operate as a functional
6 unit. And that was important for lost profits because only
7 the control line device is accused of infringing the '637
8 patent, but there's these other components that work with
9 and are integrated to work with the control line device to
10 provide that package TRS completion services.

11 Q. In your opinion, is the concept of a functional unit a
12 critical aspect of the damages analysis?

13 A. It is certainly for lost profits.

14 Q. Why is that?

15 A. Well, because the -- when Tesco and Weatherford, and
16 even Frank's, go out and provided these services, they're
17 providing all of these services at the same time. In other
18 words, when Weatherford comes on a rig, they're providing
19 the -- the tongs, everything, the tongs, control line
20 devices, all the other services together. You're -- you're
21 not -- you don't have other service vendors from other
22 competitors coming in there and providing their personnel at
23 the same time because it creates a lot of -- basically
24 chaos.

25 Q. And for the jury's benefit, could you please explain

1 what the Rite-Hite case said about functional unit?

2 A. Right. So the Rite-Hite case was a patent damages case
3 involving lost profits, and it talked about that -- I'm
4 giving you my layman's understanding of how I applied it --
5 that -- they talk about a completely functional unit. So
6 you're -- the patentee is entitled to claim or seek and
7 obtain lost profits if it can show that the patented
8 component, which here is a control line device, worked with
9 non-patented elements, such as tongs, spiders, and so forth,
10 as a complete functional unit.

11 And if so, then you can seek lost profits on all
12 those completion services, not just on the revenues
13 associated with the control line device.

14 And have you been in the courtroom when Mr. Zaleski
15 testified?

16 A. I have.

17 Q. Did he testify about a functional unit?

18 A. He did.

19 Q. What did he say?

20 A. Well, he said that all these components work together as
21 a complete functional unit. And what I mean these
22 components, the control line devices, tongs, spiders, and so
23 forth.

24 Q. Were you here in this courtroom when Mr. Porter, the
25 corporate representative for Weatherford, testified?

1 A. I was.

2 Q. What did he say?

3 A. He basically said the same thing.

4 Q. Were you here yesterday when Mr. Meeks was called to
5 testify?

6 A. I was.

7 Q. What did he say about functional unit?

8 A. Well, he said they're also a package service.

9 Q. Have you seen any evidence in this case that there's not
10 a functional unit?

11 A. No.

12 Q. With respect to the tenders --

13 A. Yes.

14 Q. -- that you reviewed --

15 A. Yes.

16 Q. -- you also -- you specifically reviewed Weatherford and
17 Tesco tenders?

18 A. I did.

19 Q. And is PX-192 a Tesco tender?

20 A. It is.

21 Q. What's shown here with respect to PX-192?

22 A. So this was a tender submitted from BHP Billiton to
23 Tesco, and it indicates what kind of equipment was required
24 for this job in the Deepwater Gulf of Mexico.

25 Q. Let me stop you there --

1 A. Yes.

2 Q. -- please.

3 Does it say requirement?

4 A. Yes, it does.

5 Q. Did it say specifically equipment requirement?

6 A. It does. I've circled it.

7 Q. What does the word requirement mean to you?

8 A. What it means to me is it's a requirement.

9 In other words, if you can't provide that equipment
10 of which the operator is saying is required, it means you
11 won't meet the technical specifications of -- for this job.

12 Q. Have you seen any evidence in this case that there is
13 not a requirement for deepwater completions in the Gulf of
14 Mexico with respect to control line manipulation devices?

15 A. No.

16 Q. Has all the evidence shown that there is a requirement?

17 A. Of the evidence --

18 MR. RALEY: I'm sorry. That's leading, Your Honor.

19 THE COURT: Sustained.

20 Q. (By Mr. Payne) Can you tell me whether all the evidence
21 has shown that there is such a requirement?

22 A. Yes. I've reviewed many tenders. I've reviewed
23 invoices and the like. And I've certainly interviewed
24 Mr. Porter and Zaleski --

25 Q. And what --

1 A. -- and I heard courtroom testimony on this subject.

2 Q. Excuse me.

3 What is the significance of this requirement to
4 have a control line device in the Deepwater Gulf of Mexico
5 for completions?

6 A. Well, the significance of it is, if you can't provide a
7 control line device, then you're not going to meet the
8 technical specifications for the job, so you won't be
9 considered for that job. You, meaning you as a company.

10 Q. And specifically with respect to PX-192 on the screen --

11 A. Yes.

12 Q. -- what do the requirements show in the left column and
13 the right column, please?

14 A. Well, what I've highlighted here is the requirement here
15 specifically identified: An AutoCLAMP control line
16 manipulating arm with accessories. And, of course, the
17 description from Tesco was that they had a control line
18 Pusher Arm that satisfied that piece of equipment
19 requirement.

20 Q. Can you clear the screen, please?

21 A. Yes. I'm trying to find the magic place.

22 Q. And what is PX-196, sir?

23 A. This is an amendment to a Shell Oil and Tesco contract.

24 Q. And what does this contract amendment say about whether
25 a control line device is required?

1 A. It says here to assume that all completion activities
2 require pusher arms and slips.

3 Q. And what does that mean in the context of this
4 agreement?

5 A. It means it's a requirement. It means you can't -- if
6 you don't have it, then you can't provide the service.

7 Q. What's the significance of the requirement in the
8 context of this Shell/Tesco agreement?

9 A. As I said, the -- the significance is if it's required
10 and you can't provide it, that specific equipment, then you
11 won't satisfy the requirements of the contract.

12 Q. And did you discuss control line manipulation devices
13 with anyone at Weatherford?

14 A. I did.

15 Q. And who did you talk to specifically?

16 A. Mr. Porter.

17 Q. Why did you talk to Mr. Porter?

18 A. Well, Mr. Porter is in charge of the offshore completion
19 services business at Weatherford, and I wanted to understand
20 from him how the offshore -- Deepwater Offshore U.S. Gulf of
21 Mexico completion services business operates and how the
22 competitors operate in that requirement and how companies or
23 operators who buy these services, what they need in terms of
24 equipment and what they require.

25 Q. And were you here when Mr. Porter testified on the first

1 day of trial?

2 A. I was.

3 Q. Do you remember what he said about whether there is a
4 requirement in the Deepwater Gulf of Mexico for completion
5 services with respect to control line manipulation devices?

6 A. I do.

7 Q. What did he say?

8 A. Well, what he said was that you cannot provide TRS
9 completion services in the offshore -- U.S. Offshore Gulf of
10 Mexico if you do not have a control line device. That's a
11 requirement.

12 Q. And did you also consider the total sales revenues for
13 both Tesco and Weatherford with respect to their Deepwater
14 Gulf of Mexico completions' operations?

15 A. I did.

16 Q. Can you summarize those for the jury, please.

17 A. Right. So I looked at the same time period going back
18 to September 2016 through October 31st, 2018, during the
19 damages period in this case. And I determined that Tesco
20 generated about [REDACTED BY ORDER OF THE COURT] in TRS completion
21 services during this time period, and during that same time
22 period, Tesco generated [REDACTED BY ORDER OF THE COURT] in revenues.
[REDACTED BY ORDER OF THE COURT]

23 Q. Let me -- you said Tesco, [REDACTED BY ORDER OF THE COURT] ?

24 A. No. I'm sorry. I meant Weatherford.

25 Q. Could you go back over that, please, to make sure the

1 jury understands?

2 A. Sure. During the same time period, which is the damages
3 period, beginning September 13th, 2016, through October
4 31st, 2018 about a month ago, Tesco generated TRS completion
5 services revenues of [REDACTED BY ORDER OF THE COURT]. During the same time
6 period, Weatherford generated sales of [REDACTED BY ORDER OF THE COURT].

7 Q. And how do those revenues bear, if at all, on the issue
8 of demand under Panduit Factor 1?

9 A. Well, they're -- to me, they're evidence of demand for
10 the patented product because these are services that involve
11 provisioning of control line device services.

12 Q. So what is your conclusion on the demand factor?

13 A. Well, my conclusion is that -- regarding
14 Panduit Factor 1 is that there is demand for the patented
15 product. And that prong of the Panduit four-factor test has
16 been satisfied.

17 Q. And remind us what Panduit Factor 2 is, please.

18 A. So Panduit Factor 2 deals with the subject of the
19 absence of alternatives.

20 In other words, are there non-infringing
21 alternatives that would have been available in the
22 marketplace to customers if Tesco hadn't sold its infringing
23 TRS completion services?

24 Q. With respect to Panduit Factor 2, did you consider
25 Mr. Zaleski's opinions?

1 A. I did.

2 Q. Did you interview him?

3 A. I did.

4 Q. Did you hear his testimony yesterday?

5 A. I did.

6 Q. And how did you rely on Mr. Zaleski?

7 A. Well, I relied on his opinions that based on his
8 investigation, that there were no available non-infringing
9 alternatives.

10 Q. And how does that impact your analysis?

11 A. Well, it means -- under Scenario A, it means that all of
12 Tesco's infringing sales would have gone to Weatherford
13 because they were the only other company that could have
14 provided TRS completion services involving the use of a
15 control line device.

16 Q. And why did you, specifically in subbullet 2 there,
17 reference Frank's products as -- as likely infringing?

18 A. Well, because Frank's is one of the major competitors in
19 the Deepwater Offshore Gulf of Mexico. It's Frank's,
20 Weatherford, and Tesco.

21 And so one of the questions I had for Mr. Zaleski
22 was whether or not Frank's infringed the '637 patent
23 because, if Frank's infringes the '637 patent, then Frank's
24 would not have been a substitute if Tesco couldn't suggest
25 its infringing products, therefore, all of Tesco's sales

1 would have gone to Weatherford; none would have gone to
2 Frank's.

3 Q. Did you hear Mr. Zaleski's testimony yesterday about
4 whether Frank's is infringing certain claims of the '637
5 patent?

6 A. I did.

7 Q. What did he say?

8 A. He said there were specific claims, including Claim 1,
9 that were infringed by Frank's Cobra product.

10 Q. And remind the jury what Factor 3 is, please.

11 A. Factor 3 has to do with manufacturing and marketing
12 capacity.

13 In other words, that means that seeking lost
14 profits, would Weatherford have been -- had sufficient
15 resources, equipment and so forth, in order to take on those
16 additional sales that Tesco actually took if those Tesco
17 sales had shifted over to Weatherford.

18 Do you have an opinion about Weatherford -- whether
19 Weatherford had the manufacturing and marketing capacity to
20 satisfy those sales.

21 A. I do.

22 Q. And what is your opinion?

23 A. My opinion is that based on my investigation,
24 Weatherford had sufficient manufacturing and marketing
25 capacity to take on the additional infringing sales that

1 Tesco actually made.

2 Q. On what information and evidence did you rely on to
3 reach that opinion?

4 A. Several things, one of which, of course, is my
5 interviews with Mr. Porter; and, two, my review of an
6 inventory list prepared by Weatherford that they had built
7 37 clamps -- not clamps, excuse me, 37 AutoCLAMPs during the
8 last --

9 Q. Is --

10 A. -- couple of years.

11 Q. Excuse me. Is the inventory PX-210?

12 A. I believe so. Let me confirm that. Yes.

13 Q. Thank you. And did you see Mr. Porter's testimony about
14 the ability to meet demand?

15 A. Yes.

16 Q. And how did he testify?

17 A. Well, he testified that they had plenty of capacity. In
18 fact, he pointed out that there was a downturn in the
19 industry in 2014 in the Offshore Gulf of Mexico because oil
20 prices dropped significantly in 2014, so they had a lot of
21 excess equipment, starting in 2014 -- they, being
22 Weatherford, had a lot of spare equipment. Not just control
23 line devices, but other equipment that works with the
24 control line devices, that functional unit we talked about.

25 Q. And remind us what Panduit Factor 4 is.

1 A. Well, that is just the ability to calculate lost
2 profits. Do you have the ability to calculate lost profits
3 once you've satisfied the other three tests?

4 Q. Did you use a specific -- specific formula to calculate
5 the amount of lost profits under the GP -- excuse me, under
6 the Panduit factors?

7 A. I did.

8 Q. And what is that formula?

9 A. Well, so the formula is taking -- determining what
10 Weatherford's lost sales would have been and then
11 multiplying it by Weatherford's incremental profit margin,
12 and that would tell you the total amount of lost profits
13 that Weatherford suffered under Scenario A.

14 Q. And with respect to the box on the left, Weatherford's
15 lost sales, what are those?

16 A. Well, in this case, what I use is -- I use Tesco's lost
17 sales -- Tesco's actual sales during the damages period, the
18 REDACTED BY ORDER OF THE COURT

19 [REDACTED] we talked about earlier. Those -- I assume
20 that Weatherford would have sold those services at Tesco's
21 prices, not Weatherford's prices.

22 Q. And is PX-181 the Tesco sales invoices?

23 A. Yeah. This is an example of one invoice from, I
24 believe, BP.

25 Q. And is this PX-181.35?

A. Yes.

1 Q. Can you explain to the jury the significance of that
2 particular Tesco invoice?

3 A. Well, this is just one invoice from Tesco during the
4 damages period involving Tesco's TRS completion services.
5 And this particular invoice was for three -- almost
6 \$366,000.00.

7 Q. And what pricing did you assume in your analysis of lost
8 profits?

9 A. I assumed that Weatherford would have provided these
10 services -- these TRS completion services under Scenario A
11 at Tesco's prices, not Weatherford's prices. Tesco's prices
12 are about [REDACTED BY ORDER OF THE COURT] on average during this time
13 period than were Weatherford's prices.

[REDACTED BY ORDER OF THE COURT]

14 Q. Does that mean your [REDACTED] profit opinion is
15 conservative?

16 A. Yes.

17 MR. RALEY: That's leading, Your Honor.

18 THE COURT: Sustained. Restate it in a non-leading
19 form.

20 MR. PAYNE: Yes, sir. Yes.

21 Q. (By Mr. Payne) Can you describe whether that impacts
22 your [REDACTED BY ORDER OF THE COURT] number?

23 A. It does, because if I had used Weatherford's pricing
24 during this time period for TRS services, instead of
25 Weatherford's pricing -- instead of TR -- Tesco's pricing,

REDACTED BY ORDER OF THE COURT

1 then the [REDACTED] in lost profits would have been
2 higher.

3 Q. And with respect to the Tesco invoices for deepwater
4 completions operations in the Gulf, did you prepare a few
5 slides that summarize all of those invoices?

6 A. I did.

7 Q. And are those the slides we're seeing now on the screen?

8 A. Yes. I believe there are three summary slides I
9 prepared.

10 Q. And can you make out the totals on Slide 20 there?

11 A. Yes, if we can blow it up a little. But that's about
REDACTED BY ORDER OF THE COURT

12 almost [REDACTED] in TRS completion services provided by
13 Tesco, going back to 2013 to the date of first infringement.

14 Q. And what are the number of days there?

15 A. The number of days are a little over 3,000 days.

16 MR. PAYNE: Could you blow that up, Mr. Boles?

17 Q. (By Mr. Payne) What is the jury seeing there with
18 respect to the 3,102 number?

19 A. Those are the number of billed rig days. In other
20 words, that's the number of days in which services were
21 being provided by Tesco, going all the way back to September
22 of 2013 through October 31st, 2018.

23 Q. And can you summarize Tesco's deepwater completion
24 sales?

25 A. Yes. So this number here, we've discussed before.

REDACTED BY ORDER OF THE COURT

1 I mentioned [REDACTED] approximately, but the actual
2 number is [REDACTED]. That's the amount of Tesco
3 completion sales involving use of the Pusher Arm, for the
4 damages period beginning in September 13, 2016, through
5 about a month ago, October 31st, 2018.

6 Q. And under Scenario A, what sales of Tesco did you assume
7 Weatherford would have made but for the infringement?

8 A. I assumed that Weatherford would have generated, under
9 REDACTED BY ORDER OF THE COURT
10 Scenario A, approximately [REDACTED] in revenues, using
11 Tesco's actual TRS completion services revenues during the
12 damages period.

13 Q. With respect to your formula that we see here, can you
14 explain what you've done on Box 1?

15 A. Right. So what I've done is I've gone back to the
16 formula we looked at, and I put in the lost sales portion of
17 REDACTED BY ORDER OF THE COURT
18 the formula, the [REDACTED] in Tesco actual completion
19 revenues during the damages period as being Weatherford's
20 lost sales.

21 Q. What's the next step in the formula?

22 A. The next step is to determine what the incremental
23 profits were during this time period.

24 Q. What are incremental profits?

25 A. So incremental profits are the additional profits that a
company like Weatherford would make on top of the actual
business or revenues it actually generated because,

1 remember, Weatherford was providing TRS completion services
2 during the damages period. But if you're assuming in
3 scenario A that they would have taken on the additional
4 sales that Tesco generated, you now have incremental sales.
5 In other words, they're generating more sales.

6 And the question is: How much more profit would
7 they have generated in their completion business than they
8 actually did during that time period? So incremental
9 revenues and profits look at what additional amount of
10 profits you would generate if you overlay Tesco's infringing
11 sales and now shifted -- shifted them over to Weatherford.

12 Q. Did you consider Weatherford's actual profits in its
13 business?

14 A. I did.

15 Q. And are those reflected in PX-188.1?

16 A. They are.

17 Q. Could you look in your exhibit binder, please, and
18 confirm that?

19 A. 188.1. Yes.

20 Q. And can you explain for the jury what PX-188.1 is,
21 please?

22 A. So these are various -- this is a profit and loss
23 statement for Weatherford's Offshore Gulf of Mexico
24 operations which are run out of Lafayette, Louisiana. And
25 these go back for a period of years, and it just shows the

1 revenues, the -- for that business unit, the -- all the
2 expenses, the variable and fixed expenses, and then what
3 they call field operating profit, which is the profit for
4 that field division after all expenses are taken into
5 consideration.

6 Q. What's the date range?

7 A. I'm sorry?

8 Q. The date range?

9 A. Well, this goes back from as early as 20 -- fiscal year
10 2013 on the far left, through -- year-to-date through the
11 third quarter of, I believe, 2018, which is October 31st
12 2018.

13 Q. Are these profit and loss statements limited to
14 Weatherford's TRS completion business?

15 A. No. It also includes the casing services run out of the
16 Weatherford Lafayette facility.

17 Q. So all of the TRS services?

18 A. All of TRS completion services, both TRS completion
19 services and casing.

20 Q. And why do you have a red box in the middle of this
21 first page of 188.1?

22 A. Because this shows the -- the profit margin for that --
23 for that unit, that business unit run out of Lafayette.

24 MR. PAYNE: Mr. Boles, can you blow that up a
25 little bit there? Thank you.

1 (By Mr. Payne) And what does the reference on the left to
2 FOP mean?

3 A. That means field operating profit. So that means the
4 field operating profit, meaning the profits associated with
5 that business unit run out of Lafayette as opposed to the
6 company overall.

7 Q. Is FOP profit and incremental profit the same?

8 A. No.

9 Q. Why not?

10 A. Well, because FOP is the profit after considering
11 certain fixed expenses that are in -- or in line items you
12 have, for example, depreciation here and you have facilities
13 cost. Those two are fixed costs. They would have been
14 incurred whether Weatherford picked up any additional Tesco
15 infringing sales or not. And so you have to take that into
16 consideration and make an adjustment for that.

17 Q. Did you, in fact, make any adjustments with respect to
18 facilities and appreciation?

19 A. I did.

20 Q. How did you do that?

21 A. Well, I removed them from -- I added -- these expenses
22 were already deducted in getting a field operating profit,
23 so I had to go back to field operating profit in order to
24 make an adjustment for incremental profits.

25 Q. And what is the reference in the second bullet to

1 reduced Weatherford's profit margin to account for Tesco's
2 lowers prices?

REDACTED BY ORDER OF THE COURT

3 A. Right. So as I mentioned earlier, the [REDACTED] are
4 the -- Tesco's infringing sales, TRS completion services.
5 Those sales were -- were -- Weatherford, during that time
6 period, would have generated higher sales because,
7 historically, Weatherford prices its products more than
8 Tesco.

9 So I had to recognize that -- since I'm making an
10 adjustment and now using only Tesco's invoice -- invoices
11 and Tesco's prices, I needed to adjust Weatherford's profit
12 margin down to figure out what Weatherford's profit margin
13 would have been as applied to Tesco's lower prices.

14 So, in other words, I lowered Weatherford's profit
15 margin by an additional [REDACTED], reflecting the fact that
16 I'm using Tesco's pricing.

17 Q. And back to your Scenario A formula, what did you find
18 ultimately with respect to Weatherford's incremental profit
19 margin?

20 A. So I applied the -- I determined that the incremental
21 profit margin for Weatherford during the damages period
22 going back to September 2016 was approximately [REDACTED].
REDACTED BY ORDER OF THE COURT

23 So when I multiplied that by the [REDACTED] in
24 lost sales, that would give me that [REDACTED] in lost
25 profits that we talked about at the beginning when we talked

1 about Scenario A.

2 Q. Can you summarize your Scenario A analysis for the jury,
3 please?

4 A. Yes. So my analysis of Scenario A indicates that based
5 on my analysis, I believe that the four Panduit factors were
6 satisfied, and, therefore, Weatherford would be entitled to
7 lost profits. And the amount of lost profits under Scenario
8 A that Weatherford is entitled to would be [REDACTED BY ORDER OF THE COURT].

9 Q. And why are we going to look at Scenario B?

10 A. Well, these are alternatives because I don't know what
11 the trier of facts is going to ultimately determine to be
12 the facts of the case. So I've just prepared two
13 alternative calculations, although it's my opinion that
14 Scenario A is the appropriate measure of damages based on
15 Mr. Zaleski's testimony.

16 Q. Would you speak up a little bit?

17 A. Sure. I'm sorry.

18 Q. It's okay.

19 A. Allergies.

20 Q. And remind us what Scenario B is.

21 A. Right. So Scenario B is this hybrid scenario I
22 mentioned where there's a combination of lost profits of [REDACTED BY ORDER OF THE COURT]
[REDACTED BY ORDER OF THE COURT]

23 [REDACTED] and reasonable royalties of [REDACTED], totaling
24 [REDACTED].

25 And the reason there are lost profits in Scenario B

1 is because we assume in Scenario B that Frank's is a
2 legitimate competitor, that they have a non-infringing
3 alternative, something Mr. Zaleski concluded they didn't
4 have, but in this scenario, I'm assuming Frank's can compete
5 with its Cobra product and that Cobra product does not
6 infringe the '637 patent.

7 Q. But, again, what did Mr. Zaleski testify to with respect
8 to Frank's vis-à-vis infringement?

9 A. He believed, based on his investigation, that Frank's
10 did infringe the '637 patent.

11 Q. Okay. And what would that mean with respect to
12 Scenarios A and B?

13 A. Well, that means Scenario B wouldn't apply. Only
14 Scenario A would apply.

15 Q. And under Scenario B, how did you take -- how did you
16 specifically take Frank's into consideration?

17 A. So I had to look at information regarding market share
18 in the Deepwater Gulf -- U.S. Deepwater Gulf of Mexico. And
19 I had to look at Tesco, Frank's, and Weatherford's market
20 share during the damages period in order to figure out how
21 much -- how many lost sales of Tesco's infringing sales
22 would have gone to Weatherford and how many would have gone
23 to Frank's in Scenario B.

24 Q. What is shown in the pie chart in this slide?

25 A. Well, the pie chart shows that I have to account for all

1 infringing sales. So if a portion of Tesco's infringing
2 sales are now, just in Scenario B, considered for lost
3 profits, not a hundred percent of them, but some portion
4 because Frank's is getting some of those, then the balance,
5 though, Tesco still has to pay royalties on the remaining
6 infringing sales that are not covered by Weatherford's
7 lost -- lost sales and lost profits.

8 Q. And what does this pie show with respect to how it
9 breaks down between the market shares for -- market share
10 for Weatherford versus the market share for Frank's?

11 A. Well, this doesn't show that detail. This is just
12 showing that I'm splitting up the lost profits and the
13 reasonable royalties to account for 100 percent of all of
14 Tesco's **REDACTED BY ORDER OF THE COURT** of infringing sales.

15 Q. And did you use a formula for Scenario B in calculating
16 damages?

17 A. Yes.

18 Q. Can you walk the jury through these boxes?

19 A. Sure. So the box on the left, this is, again, trying to
20 figure out lost profits -- the lost profits component,
21 assuming Scenario B, that Frank's can compete for the Tesco
22 infringing sales, and then I have the other component, which
23 is Weatherford's reasonable royalties that I have to account
24 for.

25 So when you add those two up, that will give you

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1 the total damages in Scenario B of [REDACTED].

2 Q. And under Scenario B, how did you figure out how much of
3 Tesco's sales would be Weatherford's market share and how
4 much would be Frank's market share?

5 A. Well, I looked at data that Weatherford tracked
6 regarding the Deepwater Gulf of Mexico -- the U.S. Deepwater
7 Gulf of Mexico and which service providers were providing
8 TRS completion services on how many rigs during various
9 points in time.

10 Q. Can I ask you to look in your trial exhibit binder --

11 A. Sure.

12 Q. -- at PX-44 and PX-189 and identify those documents,
13 please, for the jury?

14 A. Did you say 44?

15 Q. Yes, sir.

16 A. Okay. I have them in front of me.

17 Q. And did those particular PX exhibits bear on
18 Weatherford's market share?

19 A. They do.

20 Q. How so?

21 A. Well, this is data that was tracked by Weatherford
22 regarding specific rigs in the Deepwater Gulf of Mexico at
23 various points in time and which companies are providing TRS
24 completion services.

25 Q. And what data do we see on the slide here with respect

1 to PX-44?

2 A. Well, PX-44, we just see various market share
3 calculations going back to 2015 through --

4 THE COURT: Mr. Bratic, you're going to need to
5 speak in the microphone.

6 THE WITNESS: Sorry, Your Honor.

7 THE COURT: I hear you, but you're speaking toward
8 me and not the jury.

9 THE WITNESS: I'm sorry. Let me pull it over.
10 Excuse me. Let me get some water.

11 Q. (By Mr. Payne) You can look at the screen if you want
12 to.

13 A. Right. So what I'm looking at in PX-44 are specific
14 market share calculations as summarized and as shown on the
15 screen in Slide 30. So these are just showing market share
16 data from the first quarter of 2015 through the second
17 quarter of 2017.

18 Q. And why are OES and Besco listed here in PX-44?

19 A. Well, they're listed because the top part -- this part
20 is for the entire Gulf of Mexico, the shelf, the shallow
21 in-shore of the Gulf of Mexico drilling activities, as well
22 as the Deepwater Gulf of Mexico.

23 The lower portion is where you can see that OES and
24 Besco are not highlighted because they are not in the
25 Deepwater Gulf of Mexico providing TRS completion services.

1 And since Frank's -- excuse me, Frank's, Weatherford, and
2 Tesco all provide -- were the only companies providing TRS
3 deepwater completion services during the damages period,
4 they're the ones you have to focus on to figure out what the
5 appropriate market share is for lost profits and reasonable
6 royalties, taking into consideration Frank's as a
7 competitor.

8 Q. In addition to PX-44, did you also consider Mr. Porter's
9 testimony with respect to the 2018 market share data?

10 A. Yes. He provided me updated information through the
11 third quarter of 2018 regarding Tesco, Weatherford, and
12 Frank's in the Deepwater Gulf of Mexico.

13 Q. And, specifically, what information did he testify
14 about?

15 A. Well, for example, he identified what happened over
16 time, beginning in the first quarter, and the second and
17 third quarter of 2018 in terms of how many rigs Weatherford,
18 Frank's, and Tesco had. And so I had to take that into
19 consideration.

20 Q. And what are the calculations that are shown here?

21 A. This is taking -- for example, if you look at the top
22 part, this is looking at Frank's, Weatherford, and Tesco
23 accounting for 100 percent of the market share in the
24 Deepwater Gulf of Mexico, as an example looking at 2016.

25 What I've done below is I've taken Weatherford --

1 Tesco out of the picture and reallocated Tesco's market
2 share to Frank's and Weatherford. And that's how I'm able
3 then to figure out what portion in Scenario B of Tesco's
4 **REDACTED BY ORDER OF THE COURT** in sales would go to Weatherford
5 based on time period, because market shares changed and how
6 many would go to Frank's.

7 Q. And remind the jury why you removed Tesco under Scenario
8 B.

9 A. Well, because Tesco was still assumed to be an
10 infringer, and so I have to then figure out, well, Tesco is
11 an infringer and couldn't lawfully have sold TRS completion
12 services. I then have to figure who would have gotten its
13 sales. In scenario B, I assume that Frank's would have
14 gotten some of its sales, and, of course, Weatherford would
15 have gotten some of the sales, too, because they're the only
16 three competitors in the Deepwater Gulf of Mexico providing
17 TRS completion services.

18 Q. After removing Tesco, what are the specific market share
19 percentages that you found?

20 A. Well, they ranged from a high of 50.9 percent in 2017 to
21 a low of 24.3 percent in 2018. And I use those
22 percentages -- market share calculations in my lost profits
23 calculations for Scenario B.

24 Q. And are those percentages for Weatherford?

25 A. Yes, the highlighted red at the bottom are

1 Weatherford's. The ones right above it are Frank's.

2 Q. And can you go over those specific percentages?

3 A. Sure. So for 2016, the average -- Weatherford's average
4 market share in the Deepwater Gulf of Mexico would have been
5 43.8 percent.

6 In 2017, it would have been 50.9 percent.

7 And for 2018 through October 31st, it was 24.3
8 percent.

9 Q. And under Scenario B that we're discussing, can you
10 explain to the jury how you calculated Weatherford's lost
11 profits?

12 A. Yes. So I began with the same number of infringing
13 sales during the damages period, the **REDACTED BY ORDER OF THE COURT**. I
14 applied Weatherford's overall market share -- its weighted
15 average market share during the damages period from
16 September 2016 through October 2018. And that was 41.2
17 percent. That was looking at the three numbers on the
18 previous slide we just talked about and averaging them
19 during the damage period. The effective market share during
20 that time period was 41.2 percent.

21 So when you multiply 41.2 percent of Weatherford's
22 market share times Tesco's infringing sales, you get
23 Weatherford's lost profits under Scenario B of **REDACTED BY ORDER OF THE COURT**.
24 Then when you apply Weatherford's incremental profit margin
25 during this damages period, it's **REDACTED BY ORDER OF THE COURT**, you get

1 Weatherford's lost profits under Scenario B of just under
REDACTED BY ORDER OF THE COURT

2 [REDACTED].

3 Q. And under Scenario B, in addition to Weatherford's lost
4 profits, do you also need to calculate a reasonable royalty?

5 A. Yes.

6 Q. Why?

7 A. Well, because you have to account for 100 percent of
8 infringing sales by -- we saw that -- if you can go to the
9 previous slide, please.

10 We saw that Weatherford only had under Scenario B
11 41 percent average market share. That means roughly 60
12 percent market share went to Frank's. But that means --
13 that means there's 60 percent of the infringing [REDACTED] REDACTED BY ORDER OF THE COURT
14 sales that Weatherford is not picking up in lost profits,
15 and it's entitled to compensation in the form of a
16 reasonable royalty for that remaining 60 percent of those
17 infringing sales.

18 Q. And how does this formula account for those remaining 60
19 percent of infringing sales?

20 A. Well, we then turn to figuring out what Weatherford's
21 reasonable royalties were under Scenario B to calculate
22 total damages because we've already accounted for only lost
23 profits.

24 Q. And so can you, again, with respect to Boxes 1 and 2,
25 talk about the 40 percent and 60 percent?

1 A. Right. So the 40 percent is accounted for here in
2 the -- Weatherford's lost profits. But there's 60 percent
3 of infringing sales that have to be taken into consideration
4 here in this second box on reasonable royalties.

5 Q. And with respect to the second box, what is a reasonable
6 royalty?

7 A. Well, reasonable royalty is basically rent that's paid
8 for use for somebody's patent. It's much like the example I
9 gave of the farmer and the oil and gas company. If you come
10 on the property to take oil and gas off, you have to pay
11 rents. If you want to use somebody's patents, the patent --
12 patent owner is entitled to, under the patent statute shown
13 here, no less than a reasonable royalty.

14 Q. And as a damages expert, do you consider certain factors
15 with respect to a reasonable royalty?

16 A. Yes.

17 Q. What are those factors?

18 A. Those factors are called the Georgia-Pacific factors.

19 Q. And how many Georgia-Pacific factors did you look at?

20 A. Well, there's 15 of them. And if you look here on the
21 chart, I have all 15 of them. And they come from a very
22 well-known patent case involving reasonable royalties in a
23 patent case called Georgia-Pacific versus U.S. Plywood.

24 Q. And with respect to Factor 15 on the right here --

25 A. Yes.

1 Q. -- can you explain to the jury how that factor bears on
2 a reasonable royalty analysis?

3 A. Yes. The Georgia-Pacific court -- because the parties
4 were -- there was no license. The parties were in court
5 just like Weatherford and Tesco are in court today. And
6 because they didn't agree on a license, the Court created a
7 scenario or a situation in which the Court assumed that
8 there would have been a hypothetical negotiation between
9 Georgia-Pacific and U.S. Plywood to determine a reasonable
10 royalty. And the outcome of that hypothetical negotiation
11 would have been a hypothetical license.

12 So the Court said there were 14 factors to be
13 considered to then roll into that hypothetical negotiation
14 to reach a reasonable royalty paid under a hypothetical
15 license.

16 Q. Why did you -- excuse me. Why did you group the 15
17 factors into four different buckets?

18 A. Well, because a number of them have similar
19 characteristics or similar traits, similar themes, and so
20 it's easier for discussion purposes to group them together.

21 Q. And what are the key factors in the hypothetical
22 negotiation for a royalty?

23 A. Yeah. So the -- the conditions of the hypothetical
24 negotiation shown in this slide is that the hypothetical
25 negotiation occurs about the time of first infringement,

1 which in this case goes back to June 2013. So that's when
2 Weatherford and Tesco would have sat down to have a
3 hypothetical negotiation for a hypothetical license.

4 The parties -- both parties are supposed to assume
5 that the '637 patent is valid and infringed. The
6 negotiation is an open book. And what I mean by that is
7 there are no secrets. Everybody knows what the other party
8 has in terms of information. That's very different than a
9 real world where lots of time you don't share all the
10 information you have. But here, under Georgia-Pacific,
11 everything's known to all the parties.

12 And you also can consider what's called the book of
13 wisdom, which is there's information that may have occurred
14 after the date of infringement that could inform the
15 parties' negotiations.

16 At the end of the hypothetical negotiation, the
17 parties agree on a reasonable royalty rate, and Tesco gets a
18 license to the '637 patent.

19 Q. And with respect to the first bucket, licensing
20 characteristics, what factors are in that bucket?

21 A. Well, as an example, you -- you would look to whether or
22 not Weatherford has ever licensed the '637 patent, and if
23 so, under what terms and conditions. You'd see if there
24 were any comparable licenses to the -- involving comparable
25 technology to the '637 patent that have been either licensed

1 by Tesco or were there any industry licenses that might
2 involve comparable technology.

3 Q. In your opinion, are there any licensing agreements in
4 this case and evidence that bear on the royalty rate?

5 A. In my opinion, no.

6 And with respect to the second bucket labeled Commercial
7 Success, which factors do we have there?

8 A. Well, those deal with, for example, looking at the
9 profitability and commercial success of the products made
10 under the invention, the benefits of practicing the patent
11 and things of that nature.

12 Q. And did Weatherford and Tesco generate profits that bear
13 on this bucket?

14 A. They did.

15 Q. And what information did you consider with respect to
16 Tesco's sales in this bucket?

17 A. Well, I looked at the period of infringement for Tesco,
18 and over the period of infringement, Tesco generated sales
19 of around [REDACTED BY ORDER OF THE COURT].

20 Tesco generated completion services
21 for its Pusher Arm service on a day basis because they sell
22 these services based on time. They generate about [REDACTED BY ORDER OF THE COURT]
23 per rig per day in revenues.

24 Q. And does this go specifically to Georgia-Pacific Factor
25 No. 6?

A. Yes. This impacts Georgia-Pacific No. 6.

1 Q. What is No. 6?

2 A. Well, No. 6 deals with convoyed sales. It's
3 non-patented made in conjunction with the use of the
4 patented invention.

5 Q. And how are convoyed sales relevant to your analysis on
6 a royalty?

7 A. Well, much like we talked about the functional unit
8 concept for the other components for the TRS completion
9 services for lost profits, those other components, other
10 than the control line device, would be considered convoyed
11 items under Georgia-Pacific Factor 6 because they're sold in
12 conjunction with or as a result of CRS -- the TRS completion
13 services involving control line devices.

14 Q. And specifically with respect to your conclusions of
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15 [REDACTED] per rig per day for Tesco, how does that impact your
16 analysis?

17 A. Well, it just shows that those revenues -- that they've
18 generated substantial revenues on a per-day basis based on
19 how they provided those services, and that's how they
20 generated the revenues, by providing daily services of TRS
21 completion services.

22 Q. Did you also consider Weatherford's daily rig
23 information?

24 A. I did.

25 Q. And what was that?

1 A. Well, I looked at the same time period of infringement,
2 and I determined that Weatherford generated per rig per day
3 REDACTED BY ORDER OF THE COURT
4 revenues of [REDACTED], a little higher than Tesco's revenues
5 per rig per day.

6 And then I considered Weatherford's incremental
7 REDACTED BY ORDER OF THE COURT
8 profit margin of [REDACTED] during this time period, and
9 that told me that on a day basis -- on a per rig per day
10 basis, Weatherford generated incremental profits of about
11 REDACTED BY ORDER OF THE COURT
12 [REDACTED] thousand a day.

13 Q. And how does that relate to Georgia-Pacific Factor
14 No. 8?

15 A. Well, this talks about the profitability of the products
16 and commercial success of the products, so these products
17 were commercially successful, that millions -- both
18 companies sold millions of dollars' worth of TRS completion
19 services involving use of control line devices, and both
20 companies generated profits when they provided those
21 services.

22 Q. And with respect to that information, did you consider
23 PX-182, the -- the various invoices in PX-182?

24 A. Yes.

25 Q. And did you --

A. Yes.

Q. -- did you also consider PX-187.1 and 188.1?

A. I'm sorry. 187.1?

1 Q. Yes.

2 A. And?

3 Q. 188.1?

4 A. Yes, I did.

5 Q. And what is 187.1?

6 A. 187.1 is AutoCLAMP revenues summarized by invoice.

7 Q. And 188.1?

8 A. 188.1 is that -- is the field operating profit document
9 we talked about earlier for the Weatherford Lafayette
10 operations.

11 Q. And with respect to Georgia-Pacific Factors 9 and 10,
12 did you consider the benefits of the '637 patent?

13 A. I did.

14 Q. On whom did you rely for those benefits?

15 A. Mr. Zaleski.

16 Q. Why?

17 A. Well, because he's a technical expert, and I certainly
18 wasn't qualified to determine what the benefits associated
19 with practicing the '637 patent and the asserted claims of
20 the '637 patent, so I had to turn to Mr. Zaleski for that
21 input.

22 Q. And did he discuss with you the benefits of the asserted
23 Claims 34, 35, and 36?

24 A. He did.

25 Q. And how did that impact your analysis?

1 A. Well, it impacts my analysis because it indicates to me
2 that there are different benefits associated with practicing
3 the asserted claims of the '637 patent as shown here on this
4 slide.

5 Q. And did you hear him testify about those specific
6 benefits for Claims 34, 35, and 36?

7 A. Yes.

8 Q. What are the benefits?

9 A. Well, the benefits are it improves the efficiency of the
10 pipe lower -- pipe lowering process and improves the
11 workers' safety, makes for a much safer work environment in
12 that red zone, and it provides -- prevents damaging control
13 lines and company tubulars.

14 He also, of course, explained to me there were no
15 available acceptable non-infringing alternatives to the '637
16 patent if you wanted to get these benefits.

17 Q. And did you consider the contribution of the '637 patent
18 to Tesco's infringing services?

19 A. I did.

20 Q. Did you rely on Mr. Zaleski for that information?

21 A. I did.

22 Q. How so?

23 A. Well, he's the one that provided me indication and
24 apportionment of the technological contribution of the
25 control line device to the TRS completion services, which he

1 said operated as a functional unit.

2 And so, as shown on this slide, he indicated that
3 20 percent of the -- of the TRS completion services, 20
4 percent of the value is attributed to the control line
5 handling equipment.

6 Q. And is that 20 percent figure for the control line
7 equipment important to your analysis?

8 A. It is.

9 Q. Why?

10 A. Well, because -- because I figured out what the profits
11 were associated with practicing the patents, but I also
12 needed to know how much of the revenue and profits were
13 attributed only to the patented technology as opposed to all
14 these other components, such as the elevators, spiders, and
15 the tongs, because they're not covered by the patent.

16 Q. And what calculation did you make specifically with
17 respect to Mr. Zaleski's 20 percent apportionment?

18 A. Well, as shown here, I determined what the incremental
19 profits per day that Weatherford generated were, which is
REDACTED BY ORDER OF THE COURT

20 [REDACTED] per rig day, and then I only took 20 percent --

21 Mr. Zaleski's 20 percent apportionment and multiplied that
REDACTED BY ORDER OF THE COURT

22 against the [REDACTED] and that told me that the profits
REDACTED BY ORDER OF THE COURT
23 relating only to the '637 patent were [REDACTED] per day.

24 Q. And what's the next bucket you considered?

25 A. The next bucket deals with the relationship between the

1 parties. In other words, the patent owner, Weatherford,
2 versus Tesco, what is the relationship with them under
3 Georgia-Pacific, whether they're competitors or not, whether
4 one is an inventor and the other one is the promoter?

5 Q. Has Weatherford ever licensed the '637 patent to a
6 direct competitor?

7 A. No.

8 Q. How does that bear on your analysis?

9 A. Well, it's just an indication to me that Weatherford
10 does not willingly license competitors, certainly with
11 respect to the '637 patent.

12 Q. Why wouldn't it willingly license competitors like
13 Tesco?

14 A. Well, as this -- as I understand from Mr. Zaleski, this
15 is important technology, and it gives him a competitive
16 advantage, and it's a required technology in the Deepwater
17 Gulf of Mexico.

18 So if you have patented technology that you have
19 that others don't have and customers require that
20 technology, it gives you a competitive advantage you don't
21 want to willingly give up.

22 Q. And with respect to the last bucket, what factors did
23 you consider?

24 A. Well, the last two -- the last two Georgia-Pacific
25 factors deal with the opinion of experts. For example, I

1 relied on Mr. Zaleski for various opinions and inputs into
2 my analysis. And then the -- the last 15 factors, of
3 course, the hypothetical negotiation, which rolls up all 14
4 factors into that negotiation.

5 Q. And does that mean we've covered each factor?

6 A. Yes.

7 Q. And -- and would the GP factors that we've discussed be
8 considered by the parties at the time of the hypothetical
9 negotiation in 2013?

10 A. Yes. Excuse me. Yes.

11 Q. How so?

12 A. Well, the parties would have taken that information into
13 consideration in forming their negotiations and the outcome
14 of that negotiation.

15 Q. And what are the key factors the parties would consider
16 in your opinion with respect to that hypothetical
17 negotiation?

18 A. Well, certainly Weatherford would have emphasized the
19 fact that the patent -- the '637 is valid and has been
20 infringed by Tesco, but also that the patented technology is
21 -- is novel and provides functionality and benefits.

22 Another key point Weatherford would have emphasized
23 is that there are no available acceptable non-infringing
24 alternatives, and certainly Weatherford would have pointed
25 out they're direct competitors, so, therefore, Weatherford

1 giving Tesco a license would enable Tesco to take away work
2 from Weatherford.

3 Q. And in your opinion, did one of the parties in the
4 hypothetical negotiation have more bargaining power than the
5 other?

6 A. Right. Well, I also -- yes. I also have a slide I
7 prepared about Tesco's bargaining position and what they
8 would have raised as key points, but at the end of the day,
9 I believe that Weatherford would have had greater leverage
10 in a hypothetical negotiation.

11 Q. Why would Weatherford have greater leverage in your
12 opinion?

13 A. Well, primarily because, according to Mr. Zaleski, there
14 were no alternatives available to Tesco in order to still
15 provide a control line device to customers in the Deepwater
16 Gulf of Mexico, and so, therefore, that would have shifted
17 the bargaining leverage in favor of Weatherford.

18 Q. And what about Tesco's bargaining position?

19 A. Well, Tesco would have certainly emphasized that it
20 contributed its own technology for completion services. It
21 would have emphasized that it was an established company in
22 the Deepwater Gulf of Mexico providing completion services,
23 and that there were other factors that influence customers,
24 such as price and quality of service.

25 Q. And did you use a specific formula then for a reasonable

1 royalty?

2 A. Yes. I -- I had to determine what the royalty rate was
3 and then what the royalty base was. And once you multiply
4 those two out, you'll get the amount of reasonable
5 royalties.

6 Q. And based on you're an -- analysis, what did you
7 conclude was the reasonable royalty?

8 A. Well, I concluded the reasonable royalty was -- as you
9 see here down below, it's circled -- **REDACTED BY ORDER OF THE COURT** per rig per
10 day. That's after, of course, taking the **REDACTED BY ORDER OF THE COURT**,
11 Weatherford's incremental profit, multiplying it by
12 Mr. Zaleski's 20 percent apportionment for the value of the
13 patented technology, and that gave me that **REDACTED BY ORDER OF THE COURT** per rig
14 per day as the royalty.

15 Q. And what are the other numbers we see on this slide?

16 A. Well, they're just the daily sales -- completion --
17 Weatherford's completion sales per day per rig, and then the
18 incremental profit margin we talked about earlier.

19 Q. Why did you use the metric per rig per day in your
20 analysis?

21 A. Because that's how companies such as Weatherford and
22 Tesco provide their services. They charge it out over time.
23 And when you look at the invoices, the invoices cover a
24 specific number of days that these TRS completion services
25 are provided.

1 Q. And in your royalty analysis, under Scenario B, what is
2 the next step in the formula?

3 A. Well, once I determined what the day rate was, the
4 **REDACTED BY ORDER OF THE COURT**
5 royalty per day of **[REDACTED]**, then the next thing was to
6 determine how many days would be subject to a reasonable
7 royalty in Scenario B.

8 Q. And did you consider all the days in Scenario B?

9 A. No, I -- I already had -- I had to factor out the lost
10 profits days because, remember, Scenario B has a component
11 for lost profits. So if I used all the days that TRS
12 completion services were billed, then I would be overstating
13 the royalty damages. So I had to back out the number of
14 lost profits days and only focus on the remaining days.

15 Q. And remind us how that broke down and the 40 percent/60
16 percent?

17 A. Well, that would be, for example, 60 percent of the days
18 would be accounted for in reasonable royalty days, and 40
19 percent of the days would have been account -- allocated
20 in -- already accounted for in the Scenario B lost profits
21 days.

22 Q. And for those 60 percent of the days, how many days did
23 you calculate?

24 A. 978 days during the damages period.

25 Q. And what does that mean specifically?

A. Well, that means there are 978 billed days that were not

1 included in lost profits that are subject to reasonable
2 royalties.

3 Q. And how does that impact your formula for royalty under
4 Scenario B?

5 A. Well, then I took the 978 days, put it here, and plugged
6 it into the formula, multiplied that times the [REDACTED BY ORDER OF THE COURT] per
7 rig day royalty, and that gave me reasonable royalties under
8 Scenario B of a little over [REDACTED BY ORDER OF THE COURT].

9 Q. And do you have to add that number to another number in
10 Scenario B?

11 A. Yes.

12 Q. And can you walk us through that addition?

13 A. Sure. So you -- we've just talked about the
14 [REDACTED BY ORDER OF THE COURT] in reasonable royalties under Scenario B. We
15 add -- have to add back the lost profits for Weatherford in
16 Scenario B of [REDACTED BY ORDER OF THE COURT]. And when you add
17 those two numbers together, that's going to give you total
18 damages under Scenario B of just over [REDACTED BY ORDER OF THE COURT].

19 Q. And with respect to Scenario C, can you remind the jury
20 what your analysis is?

21 A. Well, Scenario C is a scenario where there are no lost
22 profits. That's why it's N/A under Scenario C. It just
23 says that Weatherford hasn't satisfied or met its burden to
24 show that it's entitled to any lost profits, and, therefore,
25 it is entitled to no less than a reasonable royalty. And

1 the reasonable royalties would be
2 REDACTED BY ORDER OF THE COURT

3 [REDACTED] under Scenario C.

4 Q. And what formula did you use for Scenario C?

5 A. I used the same formula we talked about reasonable

6 royalties under Scenario B, but -- and I used the same

7 REDACTED BY ORDER OF THE COURT
8 royalty rate per day of [REDACTED]. But, now, rather than

9 using the 978 days, which were the partial days that were

10 only subject to reasonable royalties in Scenario B, I used

11 all the billed rig days from September 2016 through October

12 31st, 2018.

13 Q. And how do you compare the 60 percent of the days under

14 Scenario B to the number of days here?

15 A. Well, here it's a hundred percent of the rig days.

16 Q. And how did you calculate the hundred percent of the rig
17 days?

18 A. Oh, by looking at the number of -- of billed days during
19 the damages period, and that gives me 1,665 days.

20 Q. And explain why this is higher than the 978 days for
21 Scenario B.

22 A. Right. Because in Scenario B, we had -- for reasonable
23 royalties, we had 978 days. Here, we have 1,665 days

24 because the difference between the 978 days and the 1 --

25 1,665 days in this scenario was due to the lost profits days
that were calculated in Scenario B.

So here, there are no lost profits. So all of the

1 billed days during this damages period are subject to a
2 reasonable royalty.

3 Q. And how does the 1,665 days of infringement relate to
4 your formula?

REDACTED BY ORDER OF THE COURT

5 A. Well, so you multiply the [REDACTED] per rig day as a
6 royalty times the 1,665 billed days during this time period,
7 and that equals reasonable royalties of 2. -- just over [REDACTED]
8 [REDACTED] under Scenario C.

9 Q. And, again, what time period is that?

10 A. This is from September 13, 2016, through October 31st,
11 2018.

12 Q. Did you calculate any damages after October 31, 2018,
13 under any of these scenarios?

14 A. No.

15 Q. Why not?

16 A. I didn't have any additional sales information from
17 Tesco beyond October 31st, 2018.

18 Q. So can you please summarize your opinions under the
19 different scenarios?

20 A. Well, yes. So my opinions are that under Scenario A,
21 which I believe is the most appropriate scenario, the total
22 damages are [REDACTED].

REDACTED BY ORDER OF THE COURT

23 But Scenario B, which includes a hybrid of lost
24 profits and reasonable royalties, the damages are

REDACTED BY ORDER OF THE COURT

25 [REDACTED].

1 And then Scenario C, which is strictly reasonable
2 royalties, the royalties are [REDACTED].

3 MR. PAYNE: Pass the witness.

4 THE COURT: All right. Ladies and gentlemen,
5 before the Defendants cross-examine the witness, we're
6 going to take a short recess.

7 You may simply close your notebooks and leave them
8 in your chairs. Use this opportunity to stretch your legs,
9 get a drink of water. We'll be back shortly. Follow all
10 the instructions, including not to discuss the case among
11 yourselves.

12 The jury is excused for recess.

13 COURT SECURITY OFFICER: All rise.

14 (Jury out.)

15 COURT SECURITY OFFICER: All rise.

16 THE COURT: Be seated, please.

17 Are you prepared to go forward with your
18 cross-examination, Mr. Raley?

19 MR. RALEY: I am, Your Honor. And I will be using
20 the ELMO a couple of times.

21 THE COURT: Just let Ms. Lockhart know, and she'll
22 switch it over for you.

23 MR. RALEY: Thank you very much.

24 THE COURT: Let's bring in the jury, Mr. Johnston.

25 | COURT SECURITY OFFICER: All rise.

1 (Jury in.)

2 THE COURT: Please be seated.

3 We'll proceed with the Defendants'
4 cross-examination of the witness, Mr. Bratic, at this time.

5 Mr. Raley, you may proceed.

6 MR. RALEY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. RALEY:

9 Q. Mr. Bratic, you -- you base much of your damage
10 calculations on the complete, whole completion job, not just
11 the Pusher Arm itself, correct?

12 A. Yes.

13 Q. And you quoted the -- the Rite-Hite case, which requires
14 such analysis for being -- for items that are not a part of
15 the -- the patent infringement case to be a -- I believe
16 I've quoted you correctly -- complete functional unit, not
17 sold together as a business advantage, correct?

18 A. Correct.

19 Q. All right, sir. Now, you understand that these two --
20 well, let's talk about the different tools that are
21 involved. They include elevators, correct?

22 A. Yes.

23 Q. Elevator links?

24 A. I believe so.

25 Q. Load compensators?

1 A. Yes.

2 Q. Tongs?

3 A. Yes.

4 Q. Spiders?

5 A. Yes.

6 Q. Control stands?

7 A. I'm not sure about that one, but --

8 Q. Interlocks?

9 A. I've heard that.

10 Q. Single joint elevators?

11 A. Elevators, yes.

12 Q. Torque turn sensors?

13 A. I'm sorry?

14 Q. Torque turn sensors?

15 A. Yes.

16 Q. Skids?

17 A. Yes.

18 Q. Stabber?

19 A. Yes.

20 Q. You're not aware of any patent infringement claim on any
21 of these individual items, are you, sir?

22 A. No.

23 Q. And finally, the Pusher Arm, which your report estimated
24 to be 2.7 percent of the overall job, correct?

25 A. Correct.

1 Q. Okay. So this Pusher Arm, which is 2.7 percent of the
2 overall job, and what we're in court about today, you're
3 claiming that other 97.3 percent of the other tools, which
4 are not a part of the patent infringement claims in this
5 case, as part of the damages, correct?

6 A. Certainly.

7 Q. Yes, sir.

8 Now, you understand that the Pusher Arm is not
9 connected with any kind of cable or cord or anything to such
10 things as the -- the elevators or the, you know, torque or
11 the skids or the stabber?

12 A. That's my understanding.

13 Q. It's -- you plug it in -- it's kind of like a blender --
14 and you use it?

15 A. I'm not sure what you mean by plug it in.

16 Q. Okay. It's not hooked up in any kind of computer way or
17 electronic way or anything else as part of -- with these
18 other tools to your understanding?

19 MR. PAYNE: Beyond -- beyond my direct, number one.
20 Number two, that misstates the evidence.

21 MR. RALEY: Okay. It's responsive -- I'm sorry.

22 THE COURT: Go ahead. What's your response?

23 MR. RALEY: I'll wait until you're -- all right.
24 He was asked about whether it was a complete functional
25 unit, and he said that he talked to Mr. Zaleski about it,

1 so -- but I will withdraw the question, Your Honor, and --
2 and try to clarify.

3 THE COURT: I'll overrule the objection. If you
4 want to withdraw it and move on, or if you want to restate
5 it, I'll leave that with you.

6 Mr. Bratic, please try to speak into the
7 microphone.

8 THE WITNESS: Sure.

9 THE COURT: Mr. Raley has a good strong voice, and
10 your soft answers sometimes get lost.

11 THE WITNESS: I understand.

12 THE COURT: So please speak into the microphone.

13 THE WITNESS: I'll just pull it up.

14 THE COURT: All right. Let's proceed.

15 MR. RALEY: All right, sir. Thank you.

16 Q. (By Mr. Raley) All right. Do you understand that
17 neither Weatherford nor Tesco sells control lines?

18 A. Yes.

19 Q. And neither sell or install clamps?

20 A. Yes.

21 Q. That is your understanding. You're agreeing with my
22 answer -- with my question?

23 A. I'm agreeing with your answer --

24 Q. Thank --

25 A. I'm agreeing with your question.

1 Q. Thank you.

2 And Weatherford and Tesco and Frank's and others
3 are hired to run pipe, tubular running services; is that
4 correct?

5 A. Yes.

6 Other third parties actually do the clamping. They provide
7 the control lines. They -- they provide the -- the clamps,
8 and they actually do the clamping; is that correct?

9 A. That's my understanding.

10 Q. Do you understand that those parties could include
11 Schlumberger or Baker Hughes?

12 A. I certainly know about Schlumberger. I'm not sure about
13 Baker Hughes.

14 Q. Sure. All right. And you have no understanding, do
15 you, sir, that the Pusher Arm is connected by an electronic
16 cable or hydraulic or pneumatic or any other sort of
17 connection device to elevators or tongs or -- or the other
18 items that we list?

19 A. That's my understanding.

20 Q. All right, sir. Let me, if I may, sir, ask you a couple
21 of questions from your second supplemental report.

22 MR. RALEY: And I will be using the ELMO,
23 Ms. Lockhart.

24 With the Court's permission?

25 THE COURT: Proceed with the ELMO.

1 MR. RALEY: Thank you, Your Honor.

2 THE COURT: There's no need to have the comment to
3 the jury about where the questions are coming from. If
4 you'd avoid the sidebar comments, I'd appreciate it.

5 MR. RALEY: Yes, Your Honor.

6 THE COURT: Just ask the questions from wherever
7 they come from.

8 MR. RALEY: Absolutely.

9 THE COURT: Okay.

10 MR. RALEY: My apologies.

11 Q. (By Mr. Raley) All right. You wrote the second
12 supplemental --

13 A. I'm sorry?

14 Q. That's all right.

15 A. Let me just grab some water.

16 Q. Water. Just let me know when you're ready.

17 A. All right. Thank you.

18 Q. Yes, sir. You wrote a second supplemental expert report
19 on November 30th, 2018; is that correct?

20 A. Yes.

21 Q. All right. On Page -- let me do this. Is that your
22 report, sir?

23 A. It's the cover page.

24 Q. Yes. On Page 4 of your report, you say: Additionally,
25 I have updated my analysis to exclude four duplicate Tesco

1 invoices that were previously included in my analysis. I
2 have removed the following Tesco invoices from my -- and
3 then it goes to the next page -- analysis, 132384, 132390,
4 132395 -- those are the ones I'm going to ask you about.

5 Did I read the numbers correctly?

6 A. I don't think you read the fourth one.

7 Q. I'm -- there is the fourth one, but I'm -- I'm going to
8 ask you about the first three in just a second.

9 A. Okay.

10 Q. All right, sir?

11 A. Okay.

12 Q. Yes, sir. You say that you deleted those from your
13 analysis?

14 A. Yes.

15 Q. Okay. And yet on Page 1 of the Tesco estimated sales of
16 Pusher Arm services charged to Shell Corporation, those are
17 the same first three numbers that I mentioned; isn't that
18 true, sir?

19 A. Do you have a copy?

20 Q. Sure. We can obtain one for you.

21 THE COURT: Counsel, approach the bench.

22 MR. RALEY: Yes, Your Honor.

23 (Bench conference.)

24 THE COURT: Mr. Raley, this looks to me like it's a
25 Daubert motion in the middle of trial. You're attacking the

1 veracity or accuracy of his report.

2 MR. RALEY: It's not a Daubert motion. It's just
3 cross-examination.

4 THE COURT: Well, the time for motions to strike a
5 portion of an expert's report or to find that the
6 methodology is unreliable, that's all during pre-trial.
7 I'll -- I'll let you go a little further, but I'm concerned
8 that this is an attempt to Daubert the report when you chose
9 not to do it during the pre-trial under the Court's docket
10 control order.

11 MR. RALEY: I'm -- I'm cross-examining, Your Honor,
12 that --

13 THE COURT: All right.

14 MR. RALEY: -- I think that I can still do -- do
15 that. The report came in November 30th.

16 THE COURT: Well, we'll -- we'll -- we'll leave it
17 at that and see where it goes.

18 MR. RALEY: Yes, Your Honor.

19 THE COURT: One other thing.

20 MR. RALEY: Yes, Your Honor.

21 THE COURT: You have a natural tendency to talk to
22 yourself at the podium. And every time you get an answer,
23 you say, yes, sir, or thank you very much. I know that's a
24 habit. But to the extent you can limit your comments to the
25 questions and then respond with another question once you

1 get an answer and avoid that extraneous communication, I
2 think that would be proper.

3 MR. RALEY: I will try. I'm not even aware that
4 I'm doing it. I'll try to be conscious of it.

5 THE COURT: I know that. I just want to raise --
6 raise it with your attention.

7 MR. RALEY: Yes, sir.

8 THE COURT: All right. Let's proceed.

9 (Bench conference concluded.)

10 THE COURT: Let's proceed.

11 MR. RALEY: May I approach with --

12 THE COURT: You may approach the witness.

13 THE WITNESS: Thank you.

14 Q. (By Mr. Raley) Mr. Bratic, now that you have the
15 document, I'd like to go back and show you the pages I
16 referenced earlier so you can find it. It's Page 4 of 8.

17 MR. PAYNE: Your Honor, can counsel tell me where
18 he is in the report, please?

19 MR. RALEY: Yes. Page 4 of 8 in the report.

20 MR. PAYNE: The exhibit?

21 MR. RALEY: Oh, I'm -- I'm sorry. In the overall
22 exhibit, counsel, it's -- well, it's in the section that's
23 the fourth -- third overall page -- Analysis of Supplemental
24 Documents. It's Item No. IV -- Roman Numeral IV, Paragraph
25 10 -- or Section 10.

1 THE COURT: All right.

2 MR. RALEY: May I be permitted --

3 THE COURT: You gentlemen meet in the middle, take
4 your respective copies, and make sure you're both on the
5 same place.

6 MR. RALEY: Thank you, Your Honor.

7 THE COURT: Then we'll continue.

8 MR. RALEY: May I proceed, Your Honor?

9 THE COURT: Let's proceed.

10 Q. (By Mr. Raley) All right. Mr. Bratic, again, for the
11 record, the numerals I'm talking about are on the top of
12 Page 5 of 8 of your report in Section No. 10 that you say
13 you deleted from your analysis, 132384, 132390, and 132395.
14 Did I read those correctly?

15 A. Yes, you did.

16 Q. Good.

17 MR. RALEY: Sorry, Your Honor.

18 Q. (By Mr. Raley) If you could turn, please, to -- I'll
19 tell you exactly how many pages to turn, so one, two --
20 they're two-sided pages. It's a -- it's a document that is
21 entitled Tesco's Estimated Sales of Pusher Arm Services
22 Charged to Shell Corporation. Do you see that document,
23 sir?

24 A. I do.

25 Q. The top three numbers of the document are the numbers

1 that I read previously; is that true?

2 A. Yes.

3 Q. Those are the numbers that you said you deleted from
4 your report, correct?

5 A. Yes.

6 Q. Okay. And at the bottom of the page -- this is the same
7 page where you've estimated that the overall percentage of
8 the Pusher Arm in the -- in the -- in the total completion
9 job is 2.7 percent?

10 A. 2.6.

11 Q. 2.6 percent, I apologize.

12 A. Excuse me, yes. Yes.

13 Q. Thank you.

14 One more page. If you could turn, please,
15 Mr. Bratic, a couple of pages farther to a document entitled
16 Weatherford Technology Holdings, a Summary of Tesco's
17 Invoices With Pusher Arm Services.

18 A. Yes.

19 Q. Do you see that, sir?

20 A. Yes. Sorry, what exhibit is that? Could you --

21 Q. The exhibit number?

22 A. Yes.

23 Q. The overall exhibit number is -- well, your report is
24 not an exhibit, I'm sorry.

25 A. No, no, I meant supplemental -- "operating" in the

1 corner?

2 Oh, yes, sir. Second supplemental, Exhibit 9.2.

3 Are you ready? Are you ready?

4 A. Just bear with me one second.

5 Q. Yes, sir. I'll wait until you're ready.

6 A. Oh, I'm sorry. Go ahead.

7 Q. Yes. On this document, as well, are the same three
8 numbers we read earlier, which you said you had deleted from
9 your report, and yet they are in your report, correct?

10 A. Yes.

11 Q. Is it your understanding that Weatherford Technology
12 Holdings, Inc., is the owner of the patent in question, the
13 '637 patent?

14 A. That's my recollection.

15 Q. Now, the owner of the patent, Weatherford Technology
16 Holdings, Inc., does not make anything or sell anything or
17 lease anything, correct?

18 A. That's my -- excuse me. That's my understanding.

19 Q. So as -- as such, they could sue for a reasonable
20 royalty but not sue for lost profits because they don't make
21 anything, sell anything, or lease anything, correct?

22 A. That would be my understanding.

23 Q. There has been reference to cost-sharing arrangements
24 during this trial. Have you heard them when you were
25 listening?

1 A. Mr. -- I -- I heard Mr. Porter discussing them.

2 Q. Yes, sir.

3 Plaintiffs' Exhibit 7 is a cost-sharing agreement
4 between Weatherford/Lamb and several companies, including
5 Weatherford U.S., L.P. You see Weatherford U.S., L.P.?

6 A. Yes.

7 Q. Is it your understanding that Weatherford U.S., L.P.,
8 are the ones who make the Weatherford AutoCLAMP and lease
9 it?

10 A. Yes.

11 Q. This cost-sharing agreement, in Article 7, says that the
12 license that is given from the owner of the patent to the
13 person who makes the -- the AutoCLAMP is a non-exclusive
14 license.

15 Do you see that, sir?

16 A. I -- I see that in Article 7.1.

17 Q. Now, you understand that an exclusive license is
18 necessary to have the power to sue, correct?

19 THE COURT: Counsel, approach the bench.

20 (Bench conference.)

21 THE COURT: Mr. Raley, this is a damages expert.
22 This is well beyond the scope of his report, as well as
23 you're asking for legal conclusions. You're asking him to
24 tell this jury what supports a right to sue in court and
25 what doesn't.

1 This witness is not in a position to have knowledge
2 of any of the things you've asked him in this regard, and
3 they're well beyond the scope of his report, and I'm not
4 going to allow you to take a damages expert and make a legal
5 expert out of him or a technical expert.

6 MR. RALEY: May I respond, Your Honor?

7 THE COURT: Yes.

8 MR. RALEY: The whole point is that he has started
9 his damage calculation for lost profits long before
10 Weatherford U.S., L.P., had an exclusive license, which was
11 one day before the suit. And he understands this. This was
12 discussed in his deposition, and the --

13 THE COURT: Lower your voice.

14 MR. RALEY: -- and the lost profits are part of his
15 report. And this was -- this is not a surprise to anybody.
16 This is all a part of our cross examination.

17 THE COURT: I don't care if it's a surprise or not.
18 It -- he -- and I don't care if he was deposed on it. It's
19 beyond the scope of his report. It's beyond the scope of
20 the direct. And you're calling for legal conclusions from
21 him. And I just can't let three distinct areas of
22 impropriety go by without raising it.

REDACTED BY ORDER OF THE COURT

23 MR. RALEY: They've put [REDACTED] of damages on
24 the board, and a lot of that is lost profits that precede
25 the right to sue for those profits.

1 THE COURT: I'm not saying you can't make an issue
2 out of it, but you're going to have to make an issue out of
3 somebody besides a damages expert, who's not knowledgeable
4 about the right to sue or not having the right to sue. This
5 is not the witness for that. I don't know who it is, but
6 it's not a damages expert whose report is limited to
7 reliance on the technical expert and his damages
8 calculations.

9 MR. BOWICK: On day one, on direct examination, the
10 Plaintiff asked Mr. Porter if they had an exclusive license
11 in 2005, and he answered in the affirmative, which is
12 untrue.

13 MR. RALEY: And the problem is his damages --

14 MR. PAYNE: May I respond?

15 THE COURT: Just a minute.

16 MR. PAYNE: Thank you.

17 MR. RALEY: I'll back --

18 THE COURT: That's Mr. Porter.

19 MR. RALEY: I'll back off the legal question, but,
20 Your Honor, I have to be able to cross-examine on lost
21 profits. That's our whole defense.

22 THE COURT: You can testify on lost profits as to
23 what he's testified on direct and what's in his report and
24 the calculations and so forth, but the assumptions that he
25 relied and the -- the propriety of the Plaintiff to bring

1 the lawsuit they've brought are areas well beyond the
2 knowledge and scope of this witness.

3 MR. RALEY: I'm not doing that. I'm saying --

4 THE COURT: That seems it me exactly what you're
5 doing.

6 MR. RALEY: What I'm trying to do, however
7 inartfully, is show that his lost profits and damages starts
8 way too early. And that's part of his report, and that's
9 part of his deposition, and it's part of his direct
10 examination, and all I'm trying to do is cross-examine on
11 that very point. Nothing else. I'll --

12 THE COURT: I'm not -- I'm not trying to keep you
13 from trying to prove that the Plaintiffs don't have a right
14 to seek damages during the period they're asserting --

15 MR. RALEY: That's what I'm trying to do.

16 THE COURT: -- but this is a damages expert.

17 MR. RALEY: Yes.

18 THE COURT: And he's limited to the -- to the
19 material in his report. You cannot -- you cannot ask him to
20 go beyond his report and his area of expertise to the extent
21 you are.

22 MR. RALEY: I -- I will --

23 THE COURT: And none of this --

24 MR. RALEY: I'll back off the law, Your Honor. But
25 just so the Court understands my point --

1 THE COURT: You'll back off whatever I tell you to
2 back off of.

3 MR. RALEY: I'll do whatever you say. Exception is
4 noted for the record. I'm just trying to say he starts his
5 lost profits way too early, and to do that, they didn't --
6 they didn't have an exclusive license to --

7 THE COURT: You can certainly ask him if they
8 didn't have the right to bring the suit when they did and if
9 your lost profits started too early based on that, then
10 these numbers wouldn't be right.

11 MR. RALEY: Fair enough.

12 THE COURT: But you can't ask him about a
13 cost-sharing agreement and ask him to interpret a legal
14 document before this jury when he's a damages expert.

15 MR. RALEY: Yes, Your Honor.

16 THE COURT: And I'm not going to permit that.

17 MR. RALEY: Yes, Your Honor.

18 MR. BOWICK: Thank you, Your Honor.

19 THE COURT: Mr. Payne, I'm going to hear from you
20 before we leave here.

21 MR. PAYNE: Thank you. I'll be short.

22 It is calling for a legal conclusions, number one.
23 Number two, it's beyond his report.

24 Number three, Mr. Bowick has once again misstated
25 the record. PX-6 clearly says, as Mr. Porter testified to,

1 that as of December 31, 2005, this particular entity,
2 Weatherford U.S., L.P., had a perpetual exclusive license.

3 I want to state that for the record. Thank you.

4 THE COURT: I have read the cost-sharing agreement.
5 I've read the other documents. I'm assuming that when the
6 evidence is over, I'm going to get a motion to limit the
7 damages period to whatever the Defendants say the only open
8 window is, and the Plaintiffs are going to argue otherwise.

9 And the Court, if necessary, will construe the
10 legal impact of the agreements. But a damages expert is not
11 going to testify about what legally is enforceable or not
12 enforceable.

13 MR. RALEY: Understood, Your Honor.

14 MR. PAYNE: Thank you.

15 THE COURT: All right. Let's proceed.

16 (Bench conference concluded.)

17 THE COURT: Let's proceed.

18 Q. (By Mr. Raley) Without asking you to interpret this,
19 are you aware that there is an exclusive license agreement,
20 Plaintiffs' Exhibit 219, between Weatherford Technology
21 Holdings LLC and Weatherford U.S., L.P.?

22 A. I was aware that there was such an agreement.

23 Q. I didn't hear your answer.

24 A. I said, I'm aware there was such an agreement.

25 Q. Thank you, sir. And were you aware that the date of the

1 agreement is May 25th, 2017?

2 A. That's the date of this agreement.

3 Q. Is it your understanding that that is one day before
4 this lawsuit was filed?

5 A. I don't recall the precise date when the suit was filed.

6 Q. Thank you. Mr. Bratic, you agree that as an expert in
7 this case, you should focus your calculations on the
8 asserted Claims 34 to 36, correct?

9 A. Yes.

10 Q. Those are the claims at issue that the Judge and the
11 jury will be considering in this case.

12 A. That's my understanding.

13 Q. You have not limited your damage analysis solely to the
14 34 to 36 claims, correct?

15 A. I don't know how to answer that question.

16 MR. RALEY: May I approach, Your Honor?

17 THE COURT: You want to approach the witness?

18 MR. RALEY: Yes.

19 THE COURT: You may.

20 MR. RALEY: Tender a copy of the witness's
21 deposition.

22 THE WITNESS: Thank you.

23 Q. (By Mr. Raley) Mr. Bratic, do you remember testifying
24 in this case on September 21st, 2018?

25 A. I do.

1 Q. And during your deposition, you understood that you were
2 under oath, correct?

3 A. Yes, absolutely.

4 Q. And you told the truth at that time?

5 A. Yes.

6 Q. If you would look to Page 141 of your deposition,
7 starting with Line 24?

8 A. I'm sorry, Page 141?

9 Q. 141, yes, sir.

10 A. Okay.

11 Q. To 142, Line 7. Let me know when you've found it. Have
12 you found Page --

13 A. I'm sorry, 1 --

14 Q. -- 141?

15 A. I have that. But where did you want me to end?

16 Q. 141, Line 24.

17 A. Oh, I'm sorry. Okay. One second. Okay.

18 Q. I asked you: At a minimum, you agree that you have not
19 limited your damage analysis to solely the 34 to 36 claims.

20 What did you respond?

21 A. My answer was on Page 142: As to non-infringing
22 alternatives, that's correct.

23 Q. Then the next question: As to other aspects of
24 consideration of damages beyond non-infringing alternatives,
25 correct?

1 And what did you say, sir?

2 A. That's correct.

3 Q. Thank you. You agree that Claims 34 to 36 are not
4 essential to Weatherford's market share because they don't
5 practice them?

6 A. That's true. That's my understanding, I should say.

7 Q. And if Frank's does not practice Claims 34 to 36, they
8 also have a market share with their tool that is not
9 dependent on Claims 34 to 36, correct?

10 A. That would not be dependent on those claims
11 specifically, yes.

12 Q. Isn't it true, Mr. Bratic, that you didn't even ask
13 Weatherford's expert, Mr. Zaleski, if Frank's practiced
14 Claims 34 to 36? You didn't even ask him, did you, sir?

15 A. I don't believe I asked that specific question.

16 Q. And Frank's has a very large market share in Gulf of
17 Mexico completions, don't they, sir?

18 A. They do.

19 Q. How high is that share? Do you have a current
20 understanding?

21 A. Well, it's gotten -- I can tell you.

22 Q. That's in your second supplemental report.

23 A. It's also in the trial demonstratives. Depending on the
24 time period, it's gotten as high as 50 percent.

25 Q. Has it been as high as 75 percent before?

1 A. As high as 75 percent -- currently, yes.

2 Q. Are you aware of any requirements that completion
3 service providers are required to practice Claims 34 to 36?

4 A. Not specifically.

5 Q. So those claims themselves, in practicing the methods of
6 those claims, is not essential to competing in the
7 marketplace, correct?

8 A. That's not my understanding.

9 Q. If you could look on Page 80 of your deposition, sir?

10 A. Yes.

11 Q. Starting with Line --

12 A. I'm sorry, let me get there.

13 Q. Yes, sir. I'll wait until you're there.

14 A. Page 80?

15 Q. Yes, sir.

16 A. Okay.

17 Q. My -- my question in your deposition under oath in -- in
18 September: As we discussed, Weatherford's able to compete
19 in -- compete in the marketplace without practicing Claims
20 34 through 36. So those claims themselves and the
21 practicing of the method of those claims is not essential to
22 competing in the marketplace, fair statement?

23 And what was your response?

24 A. I would agree generally with that.

25 Q. And yet you did not, Mr. Bratic, in your list of

1 examples of market demand limit those examples to the
2 practice of the method of Claims 34 to 36, did you, sir?

3 A. For Panduit 1?

4 Q. In your examples of market demand, you did not limit the
5 examples to the practice of the methods of Claims 34 to 36,
6 did you, sir?

7 A. I don't believe so.

8 Q. You gave an expert opinion in the Interplan Architects
9 versus C.L. Thomas case, U.S. District Court, Southern
10 District of Texas, Houston Division?

11 A. I did.

12 Q. In 2010, that Court ruled that Mr. Bratic's methodology
13 and resulting calculations are unreliable; is that correct?

14 A. Generally is my recollection.

15 Q. And in that case, the Court granted Defendants' motion
16 to exclude Mr. Bratic's opinions as to Defendant Thomas's
17 gross revenues, correct?

18 A. Yes.

19 Q. You gave an expert opinion in -- let me get my glasses.
20 Xpert Universe versus Osco Systems in the District
21 of Delaware in 2013?

22 A. Cisco Systems.

23 Q. My apologies. With that clarification, you did give an
24 opinion in that case?

25 A. I gave several opinions.

1 Q. In that case, the Court held Bratic's numerous
2 methodological flaws are thrown into sharp relief by his
3 conclusion. The Court found the evidence on which Bratic
4 relied to be lacking in foundation and faulty for other
5 reasons; is that correct?

6 A. Well, I don't have the opinion in front of me, but I
7 have a general recollection there were some rulings from the
8 Court about that.

9 Q. Does that generally comport with your memory?

10 A. Well, the Court did exclude some of the evidence I
11 relied on, yes.

12 Q. Here is an article on the case, Mr. Bratic.

13 MR. PAYNE: Objection to publishing this.

14 THE COURT: Sustained.

15 Take that off the ELMO.

16 MR. RALEY: Yes, sir.

17 THE COURT: Approach the bench.

18 (Bench conference.)

19 THE COURT: Mr. Raley, you argued vehemently
20 against the Plaintiff showing my orders in this case
21 regarding Mr. Meeks to the jury. And yet you're going to
22 publish orders from another case where another Judge has
23 found this witness to have a flaw in his analysis or reason
24 to strike it?

25 MR. RALEY: There was a motion in limine on this

1 which they withdrew, Your Honor.

2 THE COURT: I'm aware of that. I'm just asking
3 about fundamental fairness. On the one hand you say it's
4 highly prejudicial to you to show the jury an order I've
5 signed in this case about your witness, but you want to show
6 the jury an order from another federal court in another case
7 unrelated to this one to the same jury, and you don't find
8 that prejudicial?

9 MR. RALEY: It's a completely different situation,
10 Your Honor. This is about an expert's testimony. I'm not
11 saying he's a liar. I'm not attacking his credibility. I
12 just --

13 THE COURT: Well, you can -- you can ask him about
14 what's happened in prior cases.

15 MR. RALEY: Sure.

16 THE COURT: But you're not going to publish written
17 opinions or articles or other documents.

18 MR. RALEY: Agreed.

19 THE COURT: Okay.

20 MR. RALEY: Thank you.

21 (Bench conference concluded.)

22 THE COURT: Let's proceed.

23 Q. (By Mr. Raley) Finally, Mr. Bratic, you gave an expert
24 opinion in this court in the Eastern District of Texas,
25 United States District of in Mobile Telecom Tech versus

1 Sprint Nextel in 2014, correct?

2 A. I filed an expert report in that proceeding, yes.

3 Q. That's my question.

4 A. Oh, I'm sorry. Yes.

5 Q. And the Court ruled that Defendant Samsung's motion to
6 strike the damages report of Walter Bratic is granted as to
7 overall profits and revenues, correct?

8 A. Yes. I was not allowed to talk about profits and
9 revenues.

10 MR. RALEY: No further questions, Your Honor.

11 THE COURT: You pass the witness?

12 MR. RALEY: Yes, Your Honor. I pass the witness.

13 THE COURT: Redirect by the Plaintiff?

14 MR. PAYNE: May it please the Court.

15 THE COURT: Proceed.

16 REDIRECT EXAMINATION

17 BY MR. PAYNE:

18 Q. Mr. Bratic, do you recall questions from Tesco's counsel
19 about whether you considered some of the claims in the '637
20 patent that were not asserted as being infringed?

21 A. Correct. I do.

22 Q. And with respect to your analysis of whether there are
23 acceptable non-infringing substitutes, is it proper or
24 improper to consider all of the claims of the '637 patent?

25 A. My understanding, it's proper to consider all the claims

1 of the '637 patent.

2 Q. Even the unasserted claims?

3 A. Correct.

4 Q. Why?

5 A. Why? Because, for example, as Mr. Zaleski explained,
6 that Frank's -- Frank's infringes other claims of the '637
7 patent other than Claims 34 through 36. Weatherford
8 practices other claims of the '637 patent. As he explained,
9 it's the commercial embodiment of the '637 patent as found
10 in the AutoCLAMP.

11 So you have to look at other claims of the patent
12 to see if you can get similar benefits from other claims of
13 the patent as well.

14 Q. And in your 30-plus-year career, about how many reports
15 have you authored?

16 A. Something over 2,000 reports.

17 Q. And did Mr. Raley ask you about 3 out of the 2,000?

18 A. He did.

19 Q. Okay. And is it correct that you were actually retained
20 by Mr. Raley's law firm in a current proceeding, in another
21 proceeding?

22 A. That's correct.

23 Q. To assess damages?

24 A. Yes.

25 Q. And is it also true that, in fact, you have been

1 retained by Nabors, the company that owns Tesco, to handle
2 damages issues?

3 A. Yes, in the past.

4 Q. Now, with respect to the CL Thomas case --

5 A. Yes.

6 Q. -- that Mr. Raley asked you about --

7 A. Yes.

8 Q. -- can you explain to the jury what you recall happening
9 in that case?

10 A. Well, that was an architectural copyright case, not a
11 patent case. There were three Defendants that were accused
12 of copying an architectural design for high-end gasoline
13 stations.

14 And I expressed an opinion regarding copyright
15 damages with respect to -- all three defendants. The Court
16 ruled that I had not established a causal connection between
17 the revenues generated by the convenience stores, the
18 gasoline stations, and the architectural drawings.

19 The Court excluded my report as to one of the
20 defendants, not the other two defendants, allowed me to
21 supplement my report to establish a causal connection. And
22 of course, I went and interviewed the architectural expert
23 in that case and submitted a report based on connecting the
24 drawings to the revenues, and the Court accepted that --
25 that -- that supplemental report, and the parties settled

1 that litigation.

2 Q. And did the Court strike your supplemental report?

3 A. No.

4 Q. Can you tell the jury what happened in the Cisco case to
5 which Mr. Raley referred?

6 A. Cisco was a case that had a combination of -- I'm going
7 by recollection -- I think, 42 trade secrets, 2 patents, and
8 I think 10 counts of fraud. So I was asked to quantify
9 damages as to all fraud counts, all the trade secrets, and
10 the patents.

11 The Court ruled right before trial. The Court
12 excluded all the trade secrets. The Court ruled that I was
13 only allowed to testify as to one fraud count because the
14 Court had dismissed nine fraud counts. And in that case,
15 then I also testified as to patent damages.

16 The Court ruled that on patent damages, I was not
17 allowed to rely on Cisco's projections and that I -- so that
18 evidence was not coming in. I did actually issue another
19 expert opinion on patent damages, which was allowed, and the
20 jury actually awarded a higher royalty rate than what I
21 testified to.

22 Q. And with respect to the third case that he asked you
23 about, the Sprint case, can you explain that case to the
24 jury?

25 A. Yes. The Court did not exclude my opinions regarding

1 royalty damages. The Court just said I couldn't publish to
2 the jury the amount of revenues and profits that Sprint
3 generated on the sales of the wireless network. But my
4 opinion regarding royalty damages wasn't -- was not affected
5 by that ruling.

6 Q. So in all three of those cases, did you ultimately go
7 forward with your damages opinions?

8 A. I did.

9 MR. PAYNE: Pass the witness.

10 THE COURT: Further cross-examination?

11 MR. RALEY: No further questions, Your Honor.

12 THE COURT: You may step down, Mr. Bratic.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Plaintiff, call your next witness.

15 MR. PAYNE: Your Honor, Plaintiff rests.

16 THE COURT: All right. Plaintiff has rested its
17 case-in-chief.

18 Is Defendant prepared to call its first witness in
19 its case-in-chief?

20 MR. BOWICK: Yes, Your Honor.

21 THE COURT: Proceed to call your first witness,
22 Mr. Bowick.

23 MR. BOWICK: Defendant Tesco calls Dr. John P.
24 Rodgers.

25 THE COURT: All right. Dr. Rodgers, if you'll come

1 forward and be sworn by the courtroom deputy.

2 (Witness sworn.)

3 THE COURT: Please come around, sir, and have a
4 seat on the witness stand.

5 MR. BOWICK: Dr. Rodgers, here's a notebook of
6 exhibits.

7 THE WITNESS: Thank you.

8 JOHN P. RODGERS, Ph.D., DEFENDANTS' WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. BOWICK:

11 Q. Good morning, Dr. Rodgers.

12 A. Good morning.

13 Q. Could you please explain to the jury what your role in
14 this lawsuit is?

15 A. I'm an expert witness, obviously. I was asked to
16 evaluate the infringement and validity allegations involved
17 in this case.

18 Q. Are you a licensed professional engineer?

19 A. Yes, I am.

20 Q. In which states?

21 A. Texas, North Dakota, and Connecticut.

22 Q. And what type of doctor are you?

23 A. I'm an engineer. My Ph.D. is in aerospace engineering
24 but focused on mechanical aspects, which is what most of my
25 mechanical engineering.

1 THE COURT: Dr. Rodgers, would you pull your
2 microphone a little closer so we can hear you, please, sir?

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you.

5 Go ahead, Counsel.

6 Q. (By Mr. Bowick) And where did you receive your
7 doctorate?

8 A. I got my Ph.D. at MIT.

9 Q. Now, Dr. Rodgers, do you have an understanding of the
10 methods of operating Tesco's Pusher Arm devices?

11 A. Yes, I do.

12 Q. And what's the basis of that understanding?

13 A. Well, I've witnessed the operation in Lafayette,
14 Louisiana. I've seen all the drawings, seen videos, you
15 know, read patents. So there's lots of information.

16 Q. Have you evaluated Asserted Claims 34 to 36 of the '637
17 patent as construed by this Court?

18 A. Yes, I have.

19 MR. BOWICK: Your Honor, may I grab a blow-up?

20 THE COURT: You may.

21 Q. (By Mr. Bowick) Dr. Rodgers, does Tesco's Demonstrative
22 No. 65 accurately reflect the asserted claims as construed
23 by this Court?

24 A. Yes, it does.

25 Q. And after your analysis, have you reached a conclusion,

1 based on your experience and qualification, whether the
2 method of operating Tesco's Pusher Arm infringes any of
3 Claims 34, 35, or 36?

4 A. Yeah, I've reached the conclusion that it does not
5 infringe on Claim 34 through 36.

6 Q. Thank you. Now, where are you employed, Dr. Rodgers?

7 A. I'm employed in my own engineering consulting company
8 called Starboard Innovations.

9 Q. And when did you found Starboard Innovations?

10 A. I founded the company in the year 2000.

11 Q. And what type of business is Starboard Innovations?

12 A. It's an engineering consulting business founded here in
13 Texas where I basically do a lot of problem solving,
14 innovation, technology development in a variety of
15 industries, but a lot of my experience has been in the oil
16 industry.

17 Q. Who are some of the clients that you serve?

18 A. Well, early on, I was working with Bell Helicopter, with
19 NASA, doing more aerospace-type work, but quickly after
20 relocating to Texas, realized that the oil industry was a
21 big opportunity, so I started working in the oil industry, a
22 lot with Halliburton. They've been my biggest client over
23 the years, but also with other oil companies like Shell,
24 Baker Hughes, GE, a few other smaller companies, as well.

25 Q. What does Starboard mean?

1 A. Starboard is a nautical term. It means the right side
2 of a ship, and it comes from the days -- back when I was in
3 college, I was on the crew team, so I rowed. And if your
4 ore sticks out on the right side of the boat, you're
5 considered a starboard, so I stuck with that name.

6 Q. And where did you row crew?

7 A. That was at Duke University.

8 Q. And what did you study at Duke?

9 A. At Duke I studied mechanical engineering and
10 mathematics.

11 Q. And did you obtain a degree from Duke?

12 A. Yeah, I received my Bachelors of Science and Engineering
13 degree at Duke University with a double major in mechanical
14 engineering and mathematics.

15 Q. And were you awarded any honors at Duke University?

16 A. Yeah. I graduated with distinction, and also received
17 an annual scholarship from a Navy nuclear program for
18 nuclear engineering.

19 Q. And what did you do after you graduated from Duke?

20 A. I went right from Duke to graduate school at MIT.

21 Q. And what did you study at MIT?

22 A. So I studied aircraft structures and structural dynamics
23 specifically -- so it was an application of the mechanical
24 engineering skills I had from undergraduate work in the
25 aerospace field.

1 Q. And what year did you obtain a Master's from MIT?

2 A. Master's degree was 1995.

3 Q. And what year did you obtain your doctorate from MIT?

4 A. 1999.

5 Q. Could you please describe some of your work experience
6 before you founded Starboard?

7 A. Sure. I worked at NASA for a period. I worked through
8 MIT in what they call their Space Engineering Research
9 Center and with their active materials and structures lab
10 doing technical research for a variety of different
11 government agencies, the Department of Defense mostly. And
12 then after I graduated, I worked for a company called Midé
13 Technology Company in the Boston area. And I was also
14 working on the defense research projects for different --
15 you know, Air Force, Navy, NASA, DARPA, various
16 organizations.

17 Q. And what brought you to the great state of Texas?

18 A. My wife and I determined that we wanted to go someplace
19 a lot warmer than Boston where we could, you know, afford to
20 buy a house and where there was good opportunity to start a
21 business, and so Texas called to us.

22 Q. Now, Dr. Rodgers, have you ever published any articles
23 in the oilfield?

24 A. Yeah, I've published several articles in -- through SPE
25 and other organizations in the oilfield.

1 Q. And what's one of your more recent articles that you've
2 published?

3 A. A couple of the recent ones are on -- part of a
4 completion process called perforating where you put
5 explosives in the well to blow holes in the casing and open
6 up the communications so the oil and gas can flow up the
7 completion string -- production string. And so I have a
8 couple publications on that.

9 Q. So you know a little bit about completions?

10 A. Yeah. Over the years I've worked in a lot of different
11 aspects of completions. Perforating is one of the more
12 recent ones I've been active in.

13 Q. Are you a named inventor of any patents?

14 A. Yes, I believe I'm a named inventor now on 33 U.S.
15 patents and also some international patents, as well.

16 Q. Do you have any pending now patent applications before
17 the Patent and Trademark Office?

18 A. Yeah, there are a number of them still pending, as well,
19 in addition.

20 Q. Do you have any patents related to clamping devices onto
21 completion strings?

22 A. Yes. One of my patents in working with Halliburton
23 involves clamping, what I call acoustic telemetry tools on
24 the side of tubulars, and these are tools that communicate
25 by sending sound waves up and down the pipes. So we clamp

1 those on the side of pipes.

2 Q. Now, you've -- you've been in this courtroom during this
3 trial, correct?

4 A. Yes.

5 Q. Now, are you familiar with some of the rigs that have
6 been discussed in this courtroom during this trial?

7 A. Yes, I am. Several of the rigs or platforms that have
8 been discussed during the trial are platforms that I've been
9 involved with in doing analysis for Halliburton or preparing
10 and running tools. So specific equipment that they run into
11 the oil wells that I've helped design have gone out on these
12 rigs, and I've received the tools and data back from the
13 rigs.

14 Q. And what rigs have you done work on that have been
15 discussed in this court?

16 A. It's hard to remember them all, but I know Shell Perdido
17 is one that's been mentioned quite a few times. Also
18 rigs -- several from Shell, but also from BP, BHP, Hess,
19 several other platforms, as well.

20 Q. Could you please describe what a perforating tool is?

21 A. Right. A perforating tool, they typically call them
22 guns. It's basically a pipe that's loaded with shaped
23 charge explosives. So you put the pipe down in the well,
24 and at the designated type, it detonates and it blows holes
25 out radially into the rock through the casing, which is the

1 pipe that lines the well, and basically opens up that
2 communication so the oil and gas can flow in where you want
3 it to. And so that's -- the whole process of perforating is
4 getting those explosives where they need to go so you can
5 detonate them, blow the holes, and maintain the integrity of
6 the well and not cause any damage in the process.

7 Q. And how does the oil -- once it goes through those holes
8 you've created, how does it get up to the -- to the rig?

9 A. Right. So they usually -- be a -- a tubular -- a piece
10 of tubing or pipe that runs all the way from the surface,
11 all the way down to where that zone is that they perforated
12 so the oil and gas can flow in and up that pipe.

13 MR. BOWICK: Your Honor, at this time, Tesco
14 Offshore offers Dr. Rodgers as an expert in the field of
15 oilfield completion tools and operations.

16 THE COURT: Is there objection?

17 MR. WILSON: No objection, Your Honor.

18 THE COURT: The Court will recognize the witness as
19 an expert in the stated fields.

20 MR. BOWICK: Thank you, Your Honor.

21 THE COURT: Continue.

22 Q. (By Mr. Bowick) Dr. Rodgers, did you hear Mr. Zaleski
23 talk about a person of ordinary skill in the art yesterday?

24 A. Yes, I did.

25 Q. A person of ordinary skill, that's not a real person, is

1 it?

2 A. No, it's a hypothetical person.

3 Q. And in providing your expert opinions in this case, are
4 your opinions made from the perspective of the hypothetical
5 person of ordinary skill in the art?

6 A. Yes, I -- that's the way I viewed it.

7 Q. And how many years experience in Tubular Running Service
8 would this hypothetical person of ordinary skill require?

9 A. Well, either a -- the person of ordinary skill would
10 either require a Bachelor's degree or four years of
11 experience running tubulars in related equipment.

12 Q. Thank you.

13 MR. BOWICK: Could we pull up Tesco Demonstrative
14 No. 38, please?

15 Q. (By Mr. Bowick) Dr. Rodgers, what is depicted here in
16 Demonstrative No. 38?

17 A. This is the early version of Tesco's Pusher Arm. They
18 call it the non-knuckle version.

19 Q. And how does the -- tell me about the hydraulic cylinder
20 at the bottom of the screen. How does that operate?

21 A. Well, a hydraulic cylinder just extends and contracts.
22 It gets longer or shorter, depending on what command is sent
23 to it. And that hydraulic cylinder is what powers this --
24 this Pusher Arm to move back and forth.

25 Q. And with the Tesco Pusher Arm, when the hydraulic

1 cylinder is retracted, what happens?

2 A. Well, in this case, when you retract the cylinder
3 because it's hinged, the arm actually moves forward toward
4 the pipe.

5 Q. And where is the hinge located?

6 A. That's what's labeled as the pivot point right at the
7 top of the base assembly.

8 Q. Does Tesco still use the non-knuckle Pusher Arm?

9 A. My understanding is they stopped using that in late
10 2015.

11 Q. And do you know why Tesco stopped using the non-knuckle
12 Pusher Arm?

13 A. I think they needed a little bit more control to move
14 those control lines to be clear of some of the equipment
15 that was operating in the rig center.

16 MR. BOWICK: Can we pull up Plaintiffs' Exhibit
17 149, please? And let's start it 2 minutes and 35 seconds.

18 (Video clip played.)

19 MR. BOWICK: Is this 2 minutes 35 seconds?

20 THE TECHNICIAN: Yes.

21 MR. BOWICK: Your Honor, I think this is slow
22 motion. I just want to make it go normal speed.

23 THE COURT: If you'd like leave to go to the table
24 and consult with your technical consultant, you may.

25 MR. BOWICK: Thank you, Your Honor. I just don't

1 want to waste the time.

2 THE COURT: I just don't want y'all carrying on a
3 conversation back and forth.

4 (Pause.)

5 MR. BOWICK: Could you advance it forward, please,
6 Ms. Nesser?

7 Your Honor, it's just slow.

8 Q. (By Mr. Bowick) Dr. Rodgers, what do you -- what do you
9 see here in this video --

10 THE COURT: Mr. Bowick, you have leave of the Court
11 to step over to the table and consult with your technical
12 person as you may need to.

13 MR. BOWICK: Thank you, Your Honor.

14 THE COURT: I just don't want the two of you having
15 a conversation on the record that the rest of us listen to.

16 MR. BOWICK: Thank you, Your Honor. I think I can
17 solve this.

18 THE COURT: But you two consult quietly together as
19 you need to.

20 MR. BOWICK: Ms. Lockhart, can you pull up the
21 ELMO, please?

22 Q. (By Mr. Bowick) Dr. Rodgers, what's depicted here in
23 Tesco Demonstrative No. 50?

24 A. This looks like a snapshot from the video you were just
25 trying to play. It's showing the rig hands pulling on the

1 control line to get it clear of the large red elevators on
2 the right side there so that the control line is not
3 damaged.

4 Q. And how many men are pulling on those control lines?

5 A. It looks like three of them are doing the pulling right
6 there.

7 Q. Do you know if this is the reason Tesco developed the
8 knuckle Pusher Arm?

9 A. I think that was the major motivation so that they could
10 mechanically move that control line out of the way and not
11 have to have three guys yanking on the control line.

12 Q. Okay. I'm going to circle this. Is this the elevator?

13 A. Yes, the big red part there.

14 Q. And what are these -- what are these two red things
15 connected to the elevator?

16 A. Well, that's the interface, the bails that hold between
17 the derrick and the elevator itself.

18 Q. And what is the elevator holding here?

19 A. That's the tubular or the pipe that's being run into the
20 well.

21 Q. Is that sometimes called a pipe stand?

22 A. Right. If they refer to a pipe stand, it just means
23 usually three joints or pieces of pipe are screwed together
24 in advance and stacked up so it's faster to run in.

25 Q. And how many control line clamps are -- are connected to

1 a pipe stand?

2 A. I understand that they typically have one pipe clamp per
3 stand of pipe.

4 Q. Now, what was Tesco's solution to the rig hands pulling
5 on the control lines here?

6 A. Well, they just made a simple change to make the Pusher
7 Arm a little more versatile by adding another hinge point
8 and another actuator in the middle. So instead of just
9 going back and forth from one hinge, they put a second
10 hinge, perhaps where my wrist is, so they can pivot at the
11 top and the bottom. So they have two degrees they can
12 change two -- or two ways to manipulate the arm.

13 MR. BOWICK: Tesco Demonstrative 53.

14 THE TECHNICIAN: May I have the screen?

15 Q. (By Mr. Bowick) Dr. Rodgers, what's shown here in
16 Demonstrative No. 53?

17 A. Well, this shows how the -- the new -- the newer Pusher
18 Arm with the knuckle. The knuckle version, as they call it,
19 it can bend in the middle, and it can pull that control
20 line -- it's much more versatile in its ability to pull that
21 control back out of the way so that large red elevator on
22 the right there, the control line, even though it's a
23 thick -- a pretty big one in this example, it can pull that
24 out of the way now because it's got more flexibility to bend
25 in the middle and pull it back, and the old arm couldn't do

1 that.

2 Q. Do all rigs have elevators?

3 A. Yes.

4 Q. And does the elevator come to the rig floor for every
5 stand of pipe?

6 A. Yes, it does.

7 Q. And every stand of pipe, I think you testified, has a
8 clamp?

9 A. Right. If you're running a control line, you have to
10 have a clamp on every joint of pipe, typically.

11 Q. So how many times does the knuckle crouch, as shown
12 here, per stand of pipe?

13 A. It's going to have to crouch every time one of those
14 stands of pipe is run in.

15 MR. BOWICK: Let's look at Tesco Demonstrative
16 No. 68.

17 Q. (By Mr. Bowick) Can you describe what's shown here?

18 A. Those are the side-by-side photographs from the
19 Lafayette facility of Tesco showing the Pusher Arm with the
20 knuckle version on the left, which is the newer one, and
21 then the old version on the right, which is the non-knuckle
22 version.

23 Q. And can you use your finger and show us where that hinge
24 that you referenced earlier is?

25 A. There's the hinge right there (indicating), the spot I

1 put the green on.

2 Q. Now, are the base assemblies of the knuckle and the
3 non-knuckle the same?

4 A. Yes, they're the same.

5 Q. And is the structure and geometry of the knuckle and
6 non-knuckle the same?

7 A. Yes, they're nearly identical.

8 MR. BOWICK: Tesco Demonstrative 39, please.

9 Q. (By Mr. Bowick) What does Demonstrative 39 show us?

10 A. This is showing the knuckle version of the Pusher Arm
11 and just exploding the drawing, so to speak, into the
12 different component parts.

13 MR. BOWICK: Tesco Demonstrative 46, please.

14 Q. (By Mr. Bowick) Can you describe for the jury how the
15 operator of the Pusher Arm controls the movement of the arm?

16 A. Right. So the operator has a couple of joysticks to
17 use, one for each of the two hydraulic cylinders or
18 actuators. So by pushing on the right there, you see the
19 fixed control stand there's also a Belly-Pack, which they
20 can walk around with, but by moving each lever or joystick
21 forward and back, they're able to make that hydraulic
22 actuator get longer and shorter and command the motion
23 they're looking for.

24 So in the -- in the top image on the left, you can
25 see they're making the -- the entire arm move toward or away

1 from the pipe, and in the lower, you can see they're bending
2 in the middle, so they're -- they're tipping that middle
3 hinge position over with the second control. So the
4 operator has both levers there and he can control both
5 cylinders.

6 Q. Have you seen this or a similar hydraulic at Tesco?

7 A. Yes, I have.

8 Q. And how do those levers operate?

9 A. Well, they're spring-loaded so that if you -- you can
10 push forward or pull back, and you can command the actuation
11 to go forward or back. But if you let about go with your
12 hand, it automatically springs back to that neutral
13 position, and when it's in that neutral position, it doesn't
14 move. It stops right where it is.

15 Q. Now, you mentioned the Belly-Pack.

16 MR. BOWICK: Let's look at Tesco Demonstrative 47,
17 please.

18 Q. (By Mr. Bowick) How does the Belly-Pack operate
19 different from the hydraulic control stand?

20 A. It really operates the same way. It just gives the
21 operator the opportunity to walk around and not be fixed on
22 a stand, and that way he can get a better line-of-sight to
23 what's going on at the center of the rig.

24 Q. And have you heard testimony that if you have the
25 wireless Belly-Pack, you don't need a flagger to tell you

1 when to stop the motion of the -- of the Pusher Arm?

2 A. Yes, I believe so. You know, I believe as long as you
3 have a line-of-sight that you can see, it's just a matter of
4 convenience, or depending on the personnel there, you just
5 need to be able to see where the position is with your eyes
6 or you rely on a flagger to see your position so you don't
7 bang into the pipe.

8 Q. Now, have you seen the inspection video that was taken
9 by Weatherford on June 22nd, 2018?

10 A. Yes.

11 MR. BOWICK: Can we please pull up Plaintiffs'
12 Exhibit 148, beginning at time 7:15 and just hold it there
13 for a second?

14 Q. (By Mr. Bowick) Now, Dr. Rodgers, do you recall
15 testimony in this case about --

16 MR. BOWICK: Pause.

17 Q. (By Mr. Bowick) -- about whether Tesco demonstrates the
18 operation of the knuckle version of the Pusher Arm?

19 A. Yes, I recall.

20 Q. And on the screen right now, what -- what position,
21 referenced to Tesco Demonstrative 64, is being -- is shown?

22 A. It's what we refer to as a crouch position or No. 5 on
23 the board there.

24 MR. BOWICK: Okay. Can we go ahead and play?

25 (Videoclip played.)

1 MR. BOWICK: Pause.

2 Q. (By Mr. Bowick) What position is shown here on the
3 video?

4 A. Now we're paused at Position No. 6 on the board there,
5 so that's when the control line is pulled back.

6 Q. So do we go from 5 to 6 here, from the crouched to the
7 open position?

8 A. Correct. That's the change from 5 to 6 there.

9 Q. Okay.

10 MR. BOWICK: Please play.

11 (Videoclip played.)

12 MR. BOWICK: Pause.

13 Q. (By Mr. Bowick) What is shown in this demonstration of
14 the Pusher Arm here, what position?

15 A. That would be Position 8, so we skip through 7, which is
16 really the step of the tong coming in to make up the joint
17 of pipe. And this demonstration here out in the parking
18 lot, there was no joint of pipe, so that's why you don't see
19 that or the tong as coming in. That would only be on the
20 rig, of course. So Position 8 is the clamping position
21 where you're lining that control line so you can go in there
22 and clamp it.

23 Q. Thank you.

24 MR. BOWICK: Okay. Let's go to 4 minutes and 55
25 seconds of Plaintiffs' Exhibit 148, please.

1 (Videoclip played.)

2 THE COURT: Can we stop this a minute? Can you
3 approach the bench, counsel?

4 MR. BOWICK: Pause, please.

5 (Bench conference.)

6 THE COURT: I recall specifically talking in the
7 pre-trial about animations and demonstratives without audio.
8 I remember telling both sides I had unintended bad
9 experiences where visuals have attached audio and the audio
10 was problematic and nobody knew it until it played. If you
11 can get her to put her mute button on, I'd be happy to go
12 forward.

13 MR. BOWICK: I will.

14 THE COURT: Okay.

15 MR. BOWICK: We had an agreement, but it's not
16 material for this.

17 THE COURT: Well, I mean, if you all have some
18 agreement to the contrary, but without more, I recall a
19 clear discussion of it in pre-trial where I thought I gave
20 instructions that visuals would not have attached audio.
21 And nobody's approached me with some agreement to the
22 contrary. So unless you have something like that and
23 there's a reason why we need the audio, let's put it on
24 mute.

25 MR. BOWICK: Thank you, Your Honor.

1 THE COURT: Okay.

2 MR. WILSON: Thank you.

3 (Bench conference concluded.)

4 MR. BOWICK: Ms. Nesser, please put it on mute.

5 THE COURT: Let's proceed.

6 (Videoclip played.)

7 MR. BOWICK: Pause right there.

8 Q. (By Mr. Bowick) Now, Dr. Rodgers, can you describe what
9 position we went from and what position we're in now?

10 A. Well, it looks like we've recycled, so we've gone
11 through Position 8 and back to the beginning again because
12 this process repeats itself. So you're back to a -- moving
13 the head high again, so that -- you're out of the way and
14 also able to keep that control line coming off the sheaves,
15 efficiently.

16 Q. So would that be -- we went from Position 3 to Position
17 4 here?

18 A. Right. It went through several steps there, but, yes,
19 we look like we're in Position 4 now.

20 MR. BOWICK: Okay. Can you go ahead and play it
21 again, please?

22 (Videoclip played.)

23 MR. BOWICK: Pause it.

24 Q. (By Mr. Bowick) And what position are we in now,
25 Dr. Rodgers?

1 A. Now it's back to where we started, which is Position 5.

2 Q. Has that also been referred to as the crouching
3 position?

4 A. Yes.

5 Q. Did this video show the various positions of Tesco's
6 knuckle Pusher Arm as depicted in Tesco Demonstrative 64?

7 A. Yes, it did.

8 Q. Have you heard any evidence whatsoever that Tesco fully
9 moves its arm toward the pipe and then extends the roller
10 assembly to put the control line in a position for clamping?

11 A. No, I haven't heard or seen any evidence to say that
12 that's exactly -- that's the process that Tesco uses when
13 operating this arm.

14 Q. Have you prepared an animation of the operation of
15 Tesco's Pusher Arm?

16 A. Yes, I have. I prepared an animation based on the
17 actual drawings and measurements taken during the
18 inspection.

19 MR. BOWICK: Please play Tesco Demonstrative
20 No. 80.

21 (Videoclip played.)

22 Q. (By Mr. Bowick) And, Dr. Rodgers, if you could sort of
23 explain what is being shown here and --

24 A. Right. This one is starting with the tongs, the red
25 part, sliding on -- on the rig floor there to make up the

1 next stand of pipe. So what it did is it came in and
2 screwed the pipe in. Then the control line is being moved
3 into position so that a clamp -- that blue part can slide in
4 and be attached. Now, the --

5 MR. BOWICK: Pause it.

6 Q. (By Mr. Bowick) What is being depicted in the upper
7 part of the animation there, Dr. Rodgers?

8 A. So, you know, on the right side, you're seeing all the
9 stands of pipe which are -- they call them rack. They're
10 stood up in racks 90 feet tall to make the process more
11 efficient. And the elevators there shown in red are picking
12 up one stand of pipe at a time, bringing them over to the
13 center of the rig, and aligning them so that they can thread
14 them together and screw in the next part. So the elevators
15 are lifting up that entire pipe and then holding the weight
16 of the entire string, when necessary, to run those tubulars
17 into the well.

18 Q. Now, what position is the roller assembly in -- in this
19 animation?

20 A. So the -- the roller head has the -- is in the high
21 position pulling the control line back so it's out of the
22 way of this process.

23 Q. Is the roller assembly extended to make the -- the arm
24 longer or is it in its shortest position?

25 A. No. For this animation, the roller assembly is pinned

1 to the shortest position, so that upper part of the arm is
2 as short as it can be, and the base plate on the bottom is
3 as long as it can be so that the Pusher Arm is as far from
4 the center of the rig where the pipe is as it can get.

5 MR. BOWICK: Okay. Ms. Nesser, go ahead and play.

6 (Videoclip played.)

7 MR. BOWICK: And pause it right there.

8 Q. (By Mr. Bowick) Dr. Rodgers, what's happening right
9 now?

10 A. Well, now the Pusher Arm has been put into the crouched
11 position so that it can pull that control line as far out of
12 the way as possible because it would want to allow clearance
13 for the elevators to come by and not risk damage to the
14 control line.

15 Q. And you said -- did you take measurements of the Tesco
16 Pusher Arm?

17 A. Yes, I took measurements and had all the drawings, the
18 manufacturing drawings.

19 Q. And does the animation here accurately reflect the
20 dimensions and the tolerances for the actual tool?

21 A. Yes. I did my best to match exactly the drawings and
22 then what was witnessed in the testing.

23 MR. BOWICK: Go ahead and hit play, please.

24 (Videoclip played.)

25 MR. BOWICK: Pause.

1 Q. (By Mr. Bowick) What's happening right now,
2 Dr. Rodgers?

3 A. Well, that -- that stand of pipe was put into the well
4 by the elevators. They set the slips, and the slips -- they
5 call them the spider slips. They hold all the way to that
6 pipe now, and the elevators can release and lift up out of
7 the way, and the Pusher Arm can back out of the way, as
8 well, and go to that high position so it can, you know, stay
9 out of the way as the elevators move up.

10 MR. BOWICK: Go ahead and hit play, please.

11 (Video clip played.)

12 MR. BOWICK: Pause.

13 Q. (By Mr. Bowick) What is shown right now, Dr. Rodgers, in
14 your animation?

15 A. So the -- the process is repeating. This is just a
16 different perspective angle. The control line is, again, in
17 the aligned position, so that's next to the pipe, and the
18 clamp, the blue part, is coming in to go in and clamp on
19 that control line to the pipe.

20 Q. Based on your review of Tesco's knuckle Pusher Arm, have
21 you seen anything that would stop the arm from hitting the
22 pipe?

23 A. No. In fact, quite the opposite. What I've seen is
24 that the -- even in the shortest position, pushed as far
25 away from the pipe as possible, the -- the head of that

1 Pusher Arm will always hit the pipe. You're going to always
2 be able to bang that right into the side of the pipe.

3 Q. I'm going to show you real quick --

4 THE COURT: Mr. Wilson?

5 MR. WILSON: May I approach?

6 THE COURT: Approach the bench, counsel.

7 (Bench conference.)

8 THE COURT: What's the issue?

9 MR. WILSON: I believe the opinion he just offered
10 is outside the scope of his expert report. This is exactly
11 the issue we raised when they submitted this demonstration,
12 and we told the Court that he had originally offered the
13 opinion that the Pusher Arm would always hit the pipe, and I
14 think I just heard him testify that in that position, in
15 that clamping position, it will hit the pipe.

16 And so that's a new opinion. It was not in his
17 original expert report. This is exactly the issue we
18 briefed to Your Honor on these demonstratives for the new
19 November 20th demonstration.

20 THE COURT: I recall a discussion of this. I
21 recall at least making the comment, if the report says it
22 always hits the pipe and now he says it hits the pipe in a
23 certain position, how are you surprised or not on notice
24 that he say it hits the pipe?

25 I mean, hitting the pipe from a certain position

1 would be subsumed within the broader disclosure that it
2 always hits the pipe.

3 MR. WILSON: There's a very specific reason, Your
4 Honor, and that is he's testifying that the tool operates --
5 in his report is based on the view that you cannot set up
6 the Pusher Arm in a position where it will not hit the pipe.
7 It will always hit the pipe no matter what the position --
8 the knuckle is.

9 What's happened is, at the November 20th
10 demonstration, he saw Mr. Zaleski demonstrate that that was
11 not true. He subsequently changed his opinion to what you
12 just heard, which is, well, when the arm is down in the
13 clamping position, it won't hit the pipe.

14 THE COURT: And that subsequent change of position
15 is not disclosed in any of his reports?

16 MR. WILSON: It is not, Your Honor.

17 THE COURT: Mr. Bowick, what's your response?

18 MR. BOWICK: Your Honor, he relied on the
19 demonstration that was done on Weatherford's notice that was
20 done on June 22nd, 2018, which I -- we just showed the jury
21 the video of the operation of how it's operated. That was
22 what was requested, and that was what was shown to
23 Mr. Zaleski and the lawyers. He relied on that as his basis
24 for how the tool operates.

25 After seeing that, he said, when it operates in

1 that fashion, as demonstrated, it hits the pipe every time.
2 What -- what they've done is they created a new, I guess --
3 Mr. Zaleski --

4 THE COURT: Well, let me ask you this, Mr. Bowick:
5 Has this witness filed a -- with the leave of the Court, has
6 this witness filed a supplemental report subsequent to that
7 last demonstration, or is his last effective report prior to
8 the demonstration?

9 MR. BOWICK: His last report was prior to that
10 deposition, but I was fixing to go into it. I'm going to
11 show the pictures that are included in his report that shows
12 the exact same thing that he just testified to.

13 THE COURT: Well, let me ask the question another
14 way. Do I need to excuse the jury and let's get his last
15 report out and look at the transcript of what he was just
16 asked and see if it falls within or outside the scope of his
17 report. That's my question to the two of you.

18 MR. BOWICK: I don't think so, Your Honor. I
19 think --

20 THE COURT: Well, Mr. Wilson, it's your objection.

21 MR. WILSON: Yes, Your Honor, we do.

22 THE COURT: All right. Gentlemen, I'll do that.
23 Go get the effective -- go get the last effective report for
24 Dr. Rodgers and see if you can find the precise location
25 where you believe it's covered by the report, and then I'll

1 get my copy of it and look at it, all right?

2 MR. WILSON: Thank you, Your Honor.

3 MR. BOWICK: Thank you, Your Honor.

4 (Bench conference concluded.)

5 THE COURT: Ladies and gentlemen, I know that we're
6 close to the lunch hour, but I have an issue that's arisen
7 that I need to take up with counsel outside of your
8 presence, and I'm not quite ready to excuse you for lunch,
9 but I am going to ask you to retire to the jury room for
10 just a minute.

11 If you will, leave your notebooks closed and in
12 your chairs. Don't discuss the case. I'm not going to tell
13 you if there's food back there, don't eat it, but I'm going
14 to expect you back in a few minutes, and then shortly
15 thereafter, we'll have a formal lunch break.

16 With those instructions, please retire to the jury
17 room.

18 COURT SECURITY OFFICER: All rise.

19 (Jury out.)

20 THE COURT: All right. Please be seated.

21 Mr. Wilson, you raised at the bench an objection
22 that Defendants have asked the witness questions that go
23 beyond and outside the scope of his last effective report.
24 I have before me Dr. Rodgers's report. It looks like it's
25 dated August the 6th, 2018?

1 MR. BOWICK: Your Honor, that's the invalidity
2 report, which was our burden. His rebuttal report is --

3 THE COURT: Okay. Let me find the right report.
4 August the 20th, 2018, report on non-infringement?

5 MR. BOWICK: Correct, Your Honor.

6 THE COURT: All right.

7 MR. BOWICK: If you allow, I can direct you to --

8 THE COURT: That's what I was going to ask,
9 Mr. Bowick, if you can direct me to the section of the
10 report where you believe the offered examination is covered
11 and set forth.

12 MR. BOWICK: Page 33 to 34, Paragraphs 58 to 59.

13 THE COURT: Just a moment.

14 Now, Paragraph 58 begins at the bottom of Page 32.
15 Do you want me to consider that, Mr. Bowick?

16 MR. BOWICK: Give me a second, Your Honor. I'm
17 sorry. I'm looking at notes, not the -- really the issue,
18 Your Honor, is on Page 34, and it's also -- just give me a
19 second. I have to find it, Your Honor.

20 I guess before we get into this, can have we look
21 at the transcript? I don't remember what the witness's
22 answer was.

23 THE COURT: Well, the objection is that you've
24 asked the witness to opine about the accused product only
25 hitting the pipe from a certain position but that his report

1 is and his opinion, as stated in his report, is that the
2 accused device, when operated, always hits the pipe. And
3 that's the objection as I understand it.

4 Is that correct, Mr. Wilson?

5 MR. WILSON: That's correct, Your Honor.

6 THE COURT: So what I need you to show me is a
7 section of this report where the witness says that only --
8 that in a certain position, where it's clamped -- in a
9 certain position, that the accused device doesn't hit the
10 pipe, but, otherwise, it does, which is different from the
11 position that it always hits the pipe when it's used.

12 Mr. Wilson, just for my own benefit and for
13 purposes of opposing counsel, state your objection one more
14 time. Make sure that we're exactly accurate here.

15 MR. WILSON: My objection, Your Honor, is that the
16 testimony that the -- the Pusher Arm, when in a clamping
17 position or in a certain position for clamping, is advanced
18 toward the pipe, even with the shortest adjustment hole and
19 with the longest mounting base plate will always hit the
20 pipe is a new opinion that is not expressed in his expert
21 report.

22 THE COURT: Okay. With that clarification,
23 Mr. Bowick, can you point me to a section of the report
24 where it does -- where it does disclose that opinion?

25 MR. BOWICK: Sure, Your Honor. Page 57 of his

1 report, Paragraph 77.

2 THE COURT: Let me get there. Page 77?

3 MR. BOWICK: Page 57.

4 THE COURT: 57, I'm sorry. Paragraph 77?

5 MR. BOWICK: Yes, Your Honor.

6 THE COURT: Let me read that paragraph. All right.

7 I've read Paragraph 77.

8 MR. BOWICK: Yes, sir. And if you look at the
9 first sentence, the second line there, it talks about
10 that -- the length of the boom does not determine how close
11 the roller assembly is to the tubular when the Pusher Arm
12 aligns a first person -- first portion of control line to
13 the pipe.

14 That is the clamping position. It's their
15 position. I think I referenced Dr. -- I mean, Mr. Zaleski
16 in the paragraph above, that the -- when it aligns the first
17 portion of the control line, that's the clamping position as
18 called for by these claims.

19 THE COURT: All right. Anything further?

20 MR. BOWICK: Yes, Your Honor. And with respect to
21 this issue, this entire '637 patent is all talking about
22 positions for clamping, the first sentence of the abstract,
23 the field of the invention -- this whole patent is about
24 positions for clamping.

25 THE COURT: I'm interested in the disclosures in

1 the expert's report.

2 MR. BOWICK: Sure, Your Honor. So the main
3 reference there is the first sentence of Claim 77 where he
4 clearly says, in a position that aligns the first portion of
5 the control line, which is right out of the -- Claim 34.

6 On Page 58, he provides photographs with both a
7 long and short plate showing that it hits the pipe in that
8 position, which is completely consistent with Exhibit 149,
9 which was the demonstration requested by Weatherford
10 demonstrating how the tool works in discovery of this case,
11 June 22nd, 2018.

12 THE COURT: Mr. Wilson, what's your response?

13 MR. WILSON: Your Honor, so if we take a look at
14 Paragraph 77, the first sentence reads: The length of the
15 boom does not determine how close the roller assembly is to
16 the tubular when the Pusher Arm aligns a first portion --

17 THE COURT: Slow down and speak up.

18 MR. WILSON: Sorry. When the Pusher Arm aligns a
19 first portion of the control line to the pipe. If you
20 continue to read, it talks about the fourth hole of the
21 roller assembly's neck is chosen, making the boom the
22 shortest possible length. The long mounting plate is
23 utilized. The arm or boom is able to move the roller
24 assembly -- sorry, roller head and control lines into a
25 position against the pipe or position of string as shown

1 below. And then what it says is as shown above, the roller
2 heads contact the pipe or tubing string and cannot advance
3 further, even when the length of the boom is pinned in its
4 shortest length. In this position, the Pusher Arm cannot
5 bring the control line or lines any closer to the completion
6 string.

7 Now, if we continue down to Paragraph 79, after
8 addressing Mr. Zaleski's report --

9 THE COURT: Paragraph 79?

10 MR. WILSON: That's correct, Your Honor.

11 THE COURT: Okay.

12 MR. WILSON: He continues: When Tesco's roller
13 assembly is pinned in the shortest position, Hole No. 4, as
14 described above, the boom -- the shortened length of the
15 boom -- which is a typographical error, I'm sure -- does not
16 prevent contact with the tubular when the hydraulic cylinder
17 is retracted. With the full retraction of the hydraulic
18 cylinder in the base of the Pusher Arm, the cylinder moves
19 the boom and the roller assembly head past -- or pipe
20 completion string -- that's a typo -- as shown in the
21 photographs below.

22 We can continue reading this, but I think what Your
23 Honor will see is these statements are not with respect to a
24 clamping position. These statements are unequivocal. When
25 it's pinned in the shortest length with the longest mounting

1 plate, it always hits the pipe.

2 THE COURT: Do you have anything further,
3 Mr. Bowick?

4 MR. BOWICK: Yes, Your Honor. This is a rebuttal
5 report, and the very first sentence of Paragraph 77 is
6 responding to Paragraph 76 which lays out and quotes
7 Mr. Zaleski's opinions, and it prefaced all these
8 photographs and description within -- when the Pusher Arm
9 aligns a first person [sic] of the control line to the pipe.
10 That is the context. That's how the tool is operated under
11 Dr. Rodgers's understanding. And at no time did he say at
12 any position of the knuckle it always hits the pipe. He is
13 -- he is limiting his opinion to rebuttal that when
14 Mr. Zaleski says this is how it operates, he says when it's
15 aligning a first person [sic] of the control line with a
16 pipe, the clamping position, it hits the pipe, and if the
17 pipe wasn't there, it would go past the pipe.

18 THE COURT: Mr. Wilson, it's your objection, I'll
19 give you the final word.

20 MR. WILSON: Your Honor, this is -- has turned into
21 a very, very significant issue in this case. Hence, the
22 November 20th demonstration in which Mr. Zaleski
23 demonstrated that it was possible to use this tool without
24 hitting the pipe. Subsequent to that demonstration, and
25 before that, Defendants told the Court unequivocally this

1 tool will always hit the pipe with these demonstratives,
2 these very demonstratives they showed the Court in their
3 summary judgment motion, this tool will always hit the pipe.
4 It is not possible to operate the tool without hitting the
5 pipe.

6 When Mr. Zaleski demonstrated it at the November
7 20th demonstration, they changed their position, just as we
8 briefed to the Court, and that's what the Court is hearing
9 today.

10 THE COURT: All right.

11 MR. BOWICK: Your Honor, can I respond to that
12 briefly?

13 THE COURT: This will be the last word, Mr. Bowick.
14 Go ahead.

15 MR. BOWICK: Thank you, Your Honor. We haven't
16 changed our position, Your Honor. What is at issue in this
17 case is how Tesco performs the method of aligning control
18 lines. It's not whether this device is capable of operating
19 in a way that might fit in Mr. Zaleski's new theory.

20 And this is -- this is something they can cross
21 Dr. Rodgers on. They made the arm straight up and down.
22 They've already showed the jury, and they can try to cross
23 Dr. Rodgers and say, well, if you do it this way, it won't
24 hit the pipe every time, will it, sir? That's what I think
25 is proper for an issue before the jury, Your Honor.

1 THE COURT: All right.

2 MR. BOWICK: And, Your Honor, I'd also address that
3 they've never laid out this theory of straightening the arm
4 out in some kind of strange manipulative way in their
5 infringement contentions. Their contentions are limited in
6 this case solely to extending the pin of the roller assembly
7 and nothing else. So that's my last word.

8 THE COURT: All right. I've heard all the argument
9 I want to hear. Give me just a moment.

10 All right. I'm looking at the witness's testimony
11 just prior to the objection being raised. He's being asked
12 about and commenting on the animation that's being played.
13 And he's -- and Mr. Bowick asked: Based on your review of
14 Tesco's knuckle Pusher Arm, have you seen anything that
15 would stop the arm from hitting the pipe?

16 Answer: No. In fact, quite the opposite. What
17 I've seen is that even in the shortest position, pushed as
18 far away from the pipe as possible, the head of that Pusher
19 Arm will always hit the pipe. You're going to always be
20 able to bang that right into the side of the pipe.

21 So tell me, Mr. Wilson, how is that question and
22 answer different from the report and the sections we've just
23 looked at?

24 MR. WILSON: It's not, Your Honor. I apologize. I thought
25 I heard him say in the clamping position.

1 THE COURT: I'm reading the testimony from the
2 realtime monitor in front of me. That testimony seems to be
3 consistent with the report of the witness.

4 It's at that point Mr. -- I said: Mr. Wilson? And
5 you said: May I approach? Then you both came to the bench,
6 and we had the discussion that led to where we are.

7 MR. WILSON: You're correct, Your Honor. I don't
8 see that as inconsistent.

9 THE COURT: All right. Then I'm going to overrule
10 the objection. We'll leave the testimony undisturbed. And
11 the time that we've spent from the time the parties
12 approached the bench until the jury returns will be charged
13 against the Plaintiff.

14 I'm going to bring the jury back in, Mr. Bowick,
15 and we're going to continue your direct examination.
16 However, it is about three or four minutes until noon.

17 Do you -- can you give me some idea of where you
18 are in your direct examination process, and is there a good
19 point anywhere in the near future to bring for lunch?

20 MR. BOWICK: Can I have five minutes, Your Honor?

21 THE COURT: You can have about 20 seconds. I need
22 to bring the jury back in.

23 MR. BOWICK: Okay.

24 THE COURT: You mean five minutes before we break
25 or five minutes to determine if there's a good place for us

1 to break?

2 MR. BOWICK: Just let me make a point on this, and
3 we'll break in five minutes after the jury is brought back
4 in.

5 THE COURT: In other words, in about -- you think,
6 in five minutes, you'll get to a good place to break your
7 examination?

8 MR. BOWICK: Yes, Your Honor.

9 THE COURT: And how will I know when that's going
10 to be?

11 MR. BOWICK: I will inform the Court, Your Honor.

12 THE COURT: Just look at me and smile, and I'll
13 know what you mean.

14 All right. Take your positions and your seats,
15 counsel.

16 Let's bring in the jury, Mr. Johnston.

17 COURT SECURITY OFFICER: All rise.

18 (Jury in.)

19 THE COURT: Please be seated, ladies and gentlemen.

20 All right. We'll continue with the examination of
21 the witness by the Defendants.

22 Mr. Bowick, you may continue.

23 MR. BOWICK: Thank you, Your Honor.

24 Q. (By Mr. Bowick) Dr. Rodgers, did you attend an
25 inspection at Tesco's office in Lafayette, Louisiana, a few

1 days before Thanksgiving?

2 A. Yes, I did.

3 Q. And was Mr. Zaleski present?

4 A. Yes, he was.

5 Q. And were Weatherford's attorneys present?

6 A. Yes, they were.

7 Q. And what was the purpose of this demonstration in
8 November?

9 A. Well, I believe we were looking at the -- the issue we
10 were just talking about, is whether the head of that knuckle
11 version of the Pusher Arm was able to hit the pipe and, you
12 know, to see that go through its normal operation and to
13 allow Weatherford to run additional testing on that Pusher
14 Arm to help their case.

15 MR. BOWICK: Can you pull up Tesco -- Tesco
16 Demonstrative No. 28 and pause it real quick once it's on
17 the screen?

18 Q. (By Mr. Bowick) Now, Dr. Rodgers, what is the thing
19 between the base and the -- is that a spider that the pipe's
20 in?

21 A. Right. The -- the spider slips are holding the pipe,
22 and that part in between the base of the Pusher Arm and the
23 spider is called the base plate.

24 Q. And does Tesco have different size base plates?

25 A. Yes. They have a short version and a long version.

1 Q. And does Tesco Demonstrative No. 35, which includes two
2 different photographs, show the short and long versions?

3 A. Yes. It shows the short on the left and the long on the
4 right.

5 Q. Are you aware of any other mounting plates besides the
6 short and long that Tesco uses with its Pusher Arm?

7 A. To my knowledge, those are the two options, short and
8 long right there.

9 Q. And does the base plate fix the Pusher Arm with respect
10 to the pipe and the well?

11 A. Right. Excuse me. The base plate sets the distance
12 between the spider, which is centered on the pipe, and where
13 the base of that Pusher Arm is going to be.

14 Q. Okay. We're going to watch this video.

15 MR. BOWICK: Can you go ahead and hit play?

16 (Video clip played.)

17 MR. BOWICK: Pause.

18 Q. (By Mr. Bowick) What position is the roller assembly
19 pinhole in in the Tesco Pusher Arm?

20 A. It's pinned in the shortest position, so the arm is --
21 is short as it can get.

22 Q. Could the arm or the roller assembly be retracted any
23 shorter than that so it would avoid the pipe?

24 A. No, it can't get any shorter. The telescoping part
25 there is retracted as far as it will go by that pin

1 position.

2 Q. And what happens when the -- who operated the control
3 panel during this demonstration?

4 A. I believe there were Tesco personnel operating it, and
5 then at one point, Mr. Zaleski also operated it.

6 Q. And right -- is the Pusher Arm hitting the pipe there?

7 A. Yes. It's hitting the pipe and pushing it over.

8 Q. Do you know what size tubular was used in this
9 demonstration?

10 A. Yes. That was a 3-1/2-inch pipe diameter, which is the
11 smallest size tubular that they'll run offshore on rigs like
12 this.

13 Q. And using the smallest size tubular, what happened when
14 the hydraulic cylinder in the base was retracted?

15 A. Well, when you retract that hydraulic cylinder, the arm
16 goes forward as far as it can go and hit the pipe and pushed
17 it over, basically, the worse case combination there. So if
18 it can reach it then, it can reach it anytime.

19 MR. BOWICK: Could you hit play and let's watch the
20 rest of the video?

21 (Video clip played.)

22 MR. BOWICK: Okay. Go ahead and pause that.

23 Q. (By Mr. Bowick) Is there any mechanisms that would stop
24 Tesco's Pusher Arm from contacting the pipe?

25 A. I'm not sure I understand the question.

1 Q. Is there anything that would stop it from hitting the
2 pipe before it reached the pipe?

3 A. Not -- not in what we're seeing right here. There's
4 nothing that's going to stop it. It's going to go until it
5 hits the pipe.

6 Q. So in the position shown, will the Tesco Pusher Arm
7 contact the pipe when it is advanced forward?

8 A. Yes.

9 THE COURT: All right. Ladies and gentlemen, we're
10 going to take this opportunity to break for lunch. Sorry to
11 be a little disjointed here, but it was necessary.

12 If you will, take your notebooks with you for
13 lunch, keep them in the jury room. Follow all my
14 instructions, including, of course, not to discuss the case
15 among yourselves. We'll try to start about 45 minutes from
16 now, about 10 minutes until 1:00. And with those
17 instructions, the jury is excused for lunch.

18 COURT SECURITY OFFICER: All rise.

19 (Jury out.)

20 THE COURT: The Court stands in recess.

21 (Recess.)
22
23
24
25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR-TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/18

12/5/2018
Date